

Chapter 63.

Insurance Companies Generally.

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Subchapter 1. General Provisions.

23-63-101. [Repealed.]

23-63-102. Retaliation for foreign taxes, fees, restrictions, etc.

- (a) When by or pursuant to the laws of any other state or foreign country any taxes, licenses, and other fees, in the aggregate, and any fines, penalties, deposit requirements, or other material obligations, prohibitions, or restrictions are or would be imposed upon Arkansas insurers or upon the agents or representatives of the insurers, which are in excess of the taxes, licenses, and other fees, in the aggregate, or which are in excess of the fines, penalties, deposit requirements, or other obligations, prohibitions, or restrictions directly imposed upon similar insurers, or upon the agents or representatives of those insurers, of the other state or country under the statutes of this state, so long as the laws of the state or country continue in force or are so applied, the same taxes, licenses, and other fees, in the aggregate, or fines, penalties, or deposit requirements, or other material obligations, prohibitions, or restrictions of whatever kind shall be imposed by the Insurance Commissioner upon those insurers, or upon the agents or representatives of those insurers, of the other state or country doing business or seeking to do business in Arkansas.
- (b) Any tax, license, or other fee or other obligation imposed by any city, county, or other political subdivision or agency of another state or country on Arkansas insurers or their agents or representatives shall be deemed to be imposed by that state or country within the meaning of this section.
- (c) This section shall not apply as to personal income taxes, nor as to ad valorem taxes on real or personal property, nor as to special purpose obligations or assessments imposed by another state in connection with particular kinds of insurance, other than property insurance. However, deductions, from premium taxes or other taxes otherwise payable, allowed on account of real estate or personal property taxes paid,

shall be taken into consideration by the commissioner in determining the propriety and extent of retaliatory action under this section.

- (d) In addition to the funds now appropriated and set aside for the use and benefit of firemen's relief and pension funds by §§ 24-11-809 and 24-11-810, there is appropriated and set aside for the use and benefit of the firemen's relief and pension funds the additional taxes, authorized by subsections (a)-(c) of this section, on all premiums collected by all fire, tornado, and marine insurance companies, corporations, or associations incorporated under the laws of any state or nation other than the State of Arkansas, in all cities and towns in the State of Arkansas, coming within the provisions of §§ 24-11-809 and 24-11-810.

23-63-103. Retaliation for unjustified refusal to permit business because of similar name.

Whenever any other state or foreign country refuses to permit any life insurer domiciled in Arkansas to enter in and transact insurance in the state or country upon the grounds that the name of the Arkansas insurer is the same or similar to the name of a life insurer domiciled in the other state or country, the Insurance Commissioner, if satisfied that no such similarity of names actually exists, that the refusal is unjustified, and that the Arkansas insurer should be permitted to do business in the other state or country, may, in his or her discretion, suspend or revoke the certificate of authority in Arkansas of that life insurer domiciled in the other state or country whose name has been so declared to be similar to that of the Arkansas insurer.

23-63-104. Domicile of alien insurer.

- (a) For the purpose of the Arkansas Insurance Code, except as provided under § 23-68-102(6), the domicile of an alien insurer, other than insurers formed under the laws of Canada, shall be that state designated by the insurer in writing filed with the Insurance Commissioner at time of admission to this state or within six (6) months after June 11, 1959, whichever date is the later, and may be any one (1) of the following states:
- (1) That in which the insurer was first authorized to transact insurance;
 - (2) That in which is located the insurer's principal place of business in the United States; or
 - (3) That in which is held the larger deposit of trustee assets of the insurer for the protection of its policyholders, or policyholders and creditors, in the United States.
- (b) If the insurer makes no designation, its domicile shall be deemed to be that state in which is located its principal place of business in the United States.

23-63-105. Service contracts to perform administrative functions.

- (a)(1) No domestic insurer shall make any contract with any insurance company or holding company or any other type of company whereby the company is to perform substantially all of the administrative functions for the insurer until that contract is filed with and has received prior written approval by the Insurance Commissioner.
- (2) Administrative functions of an insurer include, but are not limited to,

underwriting, policy issue, accounting, premium notice preparation, agents' commission statements, other periodical accounting reports, preparation of annual convention statements, and managerial consulting services.

- (b) Any disapproval by the commissioner shall be delivered to the insurer in writing, stating the grounds therefor.
- (c) The commissioner shall disapprove any contract if he or she finds that it:
 - (1) Subjects the insurer to excessive charges;
 - (2) Is to extend for an unreasonable length of time;
 - (3) Does not contain fair and adequate standards of performance; or
 - (4) Contains other inequitable provisions which impair the proper interests of stockholders or policyholders of the insurer.
- (d)(1) All service contracts approved under this section shall be submitted annually to the commissioner for review and approval on the anniversary date of first approval.
- (2) The commissioner, in his or her discretion, may require submission of a contract for review at any time if he or she feels a review would be in the best interest of stockholders or policyholders of the insurer.
- (3) Any contract not submitted in accordance with this act shall be deemed disapproved as of the day following the day that contract should have been submitted.
- (e) The provisions of this section shall not apply to contracts of domestic licensees governed by the provisions of:
 - (1) Sections 23-63-514 and 23-63-515 of the Insurance Holding Company Regulatory Act, § 23-63-501 et seq.;
 - (2) The Managing General Agents Act, § 23-64-401 et seq.; and
 - (3) Section 23-69-137 concerning contracts for management and exclusive agents.

23-63-106. [Repealed.]

23-63-107. Prompt processing of payment by insurer.

- (a) No insurer shall intentionally or unreasonably delay, for more than three (3) business days after presentment for collection, the processing of any properly executed and endorsed check or draft issued in settlement of an insurance claim.
- (b) It is the intent of the General Assembly that insureds or claimants shall be paid their settlement proceeds at the earliest possible time.
- (c) Any insurer violating this section shall pay the insured or claimant a penalty of two hundred dollars (\$200) or fifteen percent (15%) of the face amount of the check or draft, whichever is higher.

23-63-108. [Repealed.]

23-63-109. Natural causes.

- (a)(1) No insurance policy or contract covering damages to property shall be cancelled nor the renewal thereof denied solely as a result of claims arising from natural causes.
- (2) "Natural cause" is defined as an act occasioned exclusively by the violence of

nature where all human agency is excluded from creating or entering into the cause of the damage or injury.

- (b) Any insurer which violates the provisions of this section shall be subject to the procedures and penalties provided under the Trade Practices Act, § 23-66-201 et seq.

23-63-110. Claims which resulted in no loss made under the policy.

- (a) No insurance policy or contract, after being issued by an insurer authorized to transact business in this state, except the business of life or disability or long-term care insurance, may be cancelled nor may the premium for such a policy be increased solely as a result of claims made under the policy which resulted in no loss to the insurer.
- (b) Any insurer that violates the provisions of this section shall be subject to the procedure and penalties provided under the Trade Practices Act, § 23-66-201 et seq.

**Subchapter 2.
Authority To Do Business.**

23-63-201. Certificate of authority required - Exceptions.

- (a) No person shall act as an insurer and no insurer shall transact insurance in this state unless authorized by a subsisting certificate of authority issued to it by the Insurance Commissioner, except as to such transactions as are expressly otherwise provided for in the Arkansas Insurance Code.
- (b) A certificate of authority shall not be required of an insurer with respect to the following:
 - (1) Investigation, settlement, or litigation of claims under its policies lawfully written in Arkansas, or making change of beneficiary or other modifications of an insurance or annuity contract, or otherwise administering insurance or annuity contracts in force, or liquidation of assets and liabilities of the insurer, other than collection of new premiums, all as resulting from its former authorized operations in Arkansas;
 - (2) Transactions subsequent to issuance of or relative to a policy covering only subjects of insurance not resident, located, or expressly to be performed in Arkansas at time of issuance, or covering property in course of transportation by land, air, or water to, from, or through Arkansas and including any preparation or storage incidental thereto, and lawfully solicited, written, or delivered outside Arkansas; or
 - (3) Transactions pursuant to surplus lines coverages lawfully written under §§ 23-65-101 et seq., 23-65-201 et seq., and 23-65-301 et seq. of the Arkansas Insurance Code.
- (c) A foreign insurer may transact business in this state without certificate of authority, for the purpose and to the extent only of investing its funds in Arkansas real estate or securities, by complying with the laws of this state relating to foreign business corporations in general. Such an insurer shall not be subject to any other provisions of the Arkansas Insurance Code.

(d)(1)(A) The commissioner may, in his or her reasonable discretion guided by the standards herein contained and consistent with the purpose hereinafter set forth, issue a special permit to make fixed-dollar life-only annuity agreements with donors to any duly organized domestic or foreign nonstock corporation or association conducted without profit and engaged in active operation for at least five (5) years prior thereto solely in bona fide charitable, religious, missionary, educational, or philanthropic activities.

(B) The commissioner may approve the issuance of a permit to such a corporation or association that has not itself been engaged in active operation for five (5) years if he or she is reasonably satisfied that the entity is affiliated with a corporation or association of this description that has been in operation for such a period and that there is readily available to the entity requesting the permit an adequate level of management expertise.

(C) The permit shall authorize the corporation or association to receive gifts of money conditioned upon, or in return for, its agreement to pay an annuity to the donor, or his or her nominee, and to make and carry out the annuity agreement.

(D) Every such corporation or association shall, before making such agreements, file with the commissioner for his approval either:

- (i) A schedule of its maximum annuity rates which shall be computed on the basis of the annuity standard adopted by it for calculating its reserves; or
- (ii) A statement certifying that it adopts and will adhere to the annuity rates as published from time to time by the Committee on Gift Annuities of Dallas, Texas, or its successor, until such corporation or association advises the commissioner to the contrary in writing. At such latter time, the corporation or association shall then file a schedule of its new proposed maximum annuity rates for approval.

(E) Filings and approvals required herein shall be subject to the provisions of §§ 23-79-109 and 23-79-110.

(2) Each such domestic corporation or association shall maintain reserves with respect to the annuity or income stream which it has agreed to pay to a charitable donor either by:

(A) Calculation of such reserves upon the obligation of the permittee to the donor annuitant in the manner set forth at § 23-84-106 and the sections therein incorporated; or

(B) Segregating and maintaining in a separate account or accounts reserves in an amount equal to the aggregate values, determined at the dates of contribution, of all assets received from donors with respect to annuities for annuitants who are then living. Provided, that such reserves shall be invested in securities meeting the requirements of §§ 23-63-801 - 23-63-833, 23-63-835, 23-63-839, and 23-63-840, and provided further that:

(i) Each such domestic corporation or association maintaining reserves in the manner described at § 23-84-104 et seq. shall maintain net admitted assets at least equal to the greater of:

(a) The sum of its reserves on its outstanding agreements, calculated

in accordance with § 23-84-104, and a surplus of ten percent (10%) of such reserves; or

(b) The amount of fifty thousand dollars (\$50,000);

(ii)(a) Each such domestic corporation or association maintaining reserves in the manner described at subdivision (d)(2)(B) of this section shall maintain net admitted assets at least equal to the amount of the reserves.

(b) In determining reserves a deduction shall be made for all or any portion of an annuity risk which is reinsured by a life insurance company authorized to do business in this state.

(c) The required admitted assets shall be invested only in securities permitted by the provisions of §§ 23-63-801 - 23-63-833, 23-63-835, 23-63-839, and 23-63-840;

(iii) No such corporation or association organized under the laws of another state shall be permitted to make such annuity agreements in this state unless it complies with all requirements of this subsection imposed upon like domestic corporations or associations, except that it may invest its reserves and surplus funds in securities permitted by the laws of the state of domicile; and

(iv)(a) No such corporation or association shall make or issue in this state any annuity contract before obtaining a permit issued in accordance with the provisions of this subsection.

(b) If the commissioner finds, after notice and hearing, that any such corporation or association, having such a permit, has failed to comply with the requirements of this subsection, he or she may revoke or suspend such a permit, or order the permittee to cease making new annuity contracts until it complies.

(c) All such corporations or associations shall be required to file an annual financial statement of their operations and accounts and schedule of outstanding annuities with reserves applicable thereto within ninety (90) days of the end of their fiscal year. The report is to be prepared by a certified public accountant in accordance with generally accepted accounting principles detailing the financial condition and status of the corporation or association as of the just-concluded fiscal year. The commissioner may, in his or her reasonable discretion, either dispense with the requirement of annual statements by such corporations or associations or accept a sworn statement by two (2) or more of its principal officers in such form as will satisfy the commissioner that the requirements of this section are being met.

23-63-202. Certificate of authority - Eligibility generally.

To qualify for and hold authority to transact insurance in this state, an insurer must be otherwise in compliance with the Arkansas Insurance Code and with its charter powers and must be an incorporated stock insurer, an incorporated mutual insurer, or a reciprocal insurer, all of the same general type as may be formed as a domestic insurer under the Arkansas Insurance Code, except that:

(1) No foreign insurer shall be authorized to transact insurance in Arkansas which:

- (A) Has not furnished the Insurance Commissioner with evidence that it has been organized and actively engaged in the insurance business in the state of its incorporation for a period of three (3) years prior to the date of its application to be admitted and authorized to do business in the State of Arkansas. However, this subdivision (1)(A) shall not apply to a foreign insurance company which is:
 - (i) The wholly owned subsidiary of an insurance company admitted and authorized to do business in the State of Arkansas; or
 - (ii) The continuing corporation resulting from a merger or consolidation of insurance companies, at least one (1) of which has been organized and actively engaged in the insurance business in the state of its organization for at least three (3) years prior to the date of the application of the corporation to be admitted and authorized to do business in the State of Arkansas; and
- (B) Does not maintain reserves as required by § 23-63-601 et seq., which:
 - (i) Refers to assets and liabilities applicable to the kinds of insurance transacted by the insurer wherever transacted in the United States;
 - (ii) If a mutual life insurer, issues policies under which the policyholder is subject to contingent liability or assessment; or
 - (iii) Transacts insurance on the assessment premium plan, stipulated premium plan, cooperative plan, or any similar plan, except that the commissioner may renew the certificate of authority of any foreign insurer lawfully transacting insurance in Arkansas on any plan under its certificate of authority immediately prior to January 1, 1960, so long as the insurer is otherwise in compliance with the applicable provisions of the Arkansas Insurance Code.
- (2) No certificate of authority or license to transact any kind of insurance business shall be issued, renewed, or continued in effect to any insurer which is owned or controlled, in whole or in substantial part, by any state of the United States, or by a foreign government, or by any political subdivision, instrumentality, or agency of either, unless the insurer was so owned, controlled, or constituted and was authorized to transact insurance in this state, prior to March 3, 1959.
- (3) Foreign Lloyd's plan insurers may be authorized to transact insurance in this state as provided in § 23-63-208.

23-63-203. Certificate of authority - Eligibility - Name of insurer.

- (a) No insurer shall be authorized by original certificate of authority to transact insurance in this state which has or uses a name so similar to that of another insurer already so authorized as likely to mislead the public.
- (b) No life insurer shall be so authorized which has or uses a name deceptively similar to that of another insurer authorized to transact insurance in this state within the preceding ten (10) years if life insurance policies originally issued by the other insurer are still outstanding in this state.
- (c) No insurer shall be so authorized which has or uses a name which tends to deceive or mislead as to the type of organization of the insurer.

- (d) In case of conflict of names hereafter between two (2) insurers, or a conflict otherwise prohibited under subsections (a)-(c) of this section, the Insurance Commissioner may permit or require as a condition to the issuance of an original certificate of authority to an applicant insurer that the insurer shall use in Arkansas such supplementation or modification of its name or such business name as may reasonably be necessary to avoid conflict. No name, supplementation, or modification shall contain the principal identifying factor contained in the name of any other insurer already authorized to transact insurance in this state.

23-63-204. Certificate of authority - Eligibility - Combinations of kinds of insurance.

An insurer which otherwise qualifies therefor may be authorized to transact any one (1) kind or combination of kinds of insurance, as defined in §§ 23-62-101 - 23-62-108, except:

- (1) A life insurer shall be authorized to transact in addition only accident and health insurance. However, the Insurance Commissioner shall continue to so authorize any life insurer otherwise qualified that, immediately prior to January 1, 1960, was lawfully authorized to transact in this state kinds of insurance in addition to life and accident and health;
- (2) A reciprocal insurer shall not transact life insurance; and
- (3) A title insurer shall be a stock insurer.

23-63-205. Certificate of authority - Eligibility - Capital funds.

(a)(1) On and after January 1, 2002, to qualify for and maintain authority to transact any one (1) kind of insurance, as defined in §§ 23-62-101 - 23-62-108, or combination of kinds of insurance as shown in this subsection, an insurer applying for its original certificate of authority in Arkansas shall possess and maintain in cash and marketable securities unimpaired paid-in capital if the insurer is a domestic, foreign, or alien stock insurer or surplus if the insurer is a domestic, foreign or alien mutual, or domestic mutual legal reserve life insurer, or foreign or alien reciprocal insurer, in an amount not less than is applicable under the schedule below, and shall possess when first so authorized such additional funds as surplus as are required under § 23-63-207:

Kinds of Insurance	Minimum Capital or Surplus Required
Life	\$ 750,000
Accident and Health	750,000
Life and Accident and Health	750,000
Property	500,000
Casualty	750,000
Surety	750,000
Marine	500,000
Title	250,000
Property, Casualty, Surety, and Marine	750,000
Combination of other lines	750,000

- (2) As to any combination of kinds of insurance, other than combinations of kinds of insurance specifically listed in this subsection, the insurer shall possess the sum of

the minimum capital or surplus required by this subsection for the kinds of insurance it proposes to transact.

- (3) The Insurance Commissioner may require reinsurance on terms and in amounts as are reasonable under the circumstances for abstractor's professional liability insurance when written by title insurers.
- (4) In his or her discretion, the commissioner may require the insurer to possess and maintain additional capital, if a stock insurer, and surplus, if a mutual or reciprocal insurer, in addition to that required by this section, based on the financial condition of the insurer or based on the types, volume, or nature of the business transacted by the insurer.
- (b) An insurer holding a valid certificate of authority to transact insurance in this state immediately prior to January 1, 2002, may continue to be authorized to transact the same kinds of insurance as permitted by the certificate of authority by maintaining thereafter the same amount of paid-in capital stock, if the insurer is a stock insurer, or the amount of surplus, if the insurer is a mutual or reciprocal insurer, as required by the laws of this state for such an insurer immediately prior to January 1, 2002. However, the insurer shall not be granted authority to transact any other or additional kind of insurance, unless it then fully complies with the requirement as to capital and surplus, as applied to the kinds of insurance it then proposes to transact, as provided by this section with respect to insurers applying for original certificates of authority.
- (c) Capital and surplus requirements shall be based upon all the kinds of insurance actually transacted or currently to be transacted by the insurer in any and all areas in which it operates, whether or not only a portion of the kinds are to be transacted in this state.
- (d) As to surplus required for qualification to transact one (1) or more kinds of insurance and to be maintained, domestic mutual insurers, other than mutual life insurers, shall be governed by §§ 23-69-101 - 23-69-103, 23-69-105 - 23-69-141, 23-69-143, and 23-69-149 - 23-69-156, and domestic reciprocal insurers shall be governed by §§ 23-70-101 et seq.
- (e) A life insurer may also grant annuities without additional capital or additional surplus.
- (f) A casualty insurer may be authorized to transact also accident and health insurance without additional capital or additional surplus.

23-63-206. Certificate of authority - Deposit of securities required.

- (a) All insurers authorized to transact insurance in this state shall make and maintain a deposit of securities as follows:
 - (1)(A)(i) All insurers authorized to transact only life or accident and health insurance, or both, shall deposit through the Insurance Commissioner and subject to the conditions specified in § 23-63-909 securities eligible for deposit under § 23-63-903 and having at all times a market value of not less than one hundred thousand dollars (\$100,000), conditioned for the payment of policyholders and creditors of the insurer in this state and the prompt payment of all claims arising and accruing to any person in this state.
 - (ii) On and after January 1, 2002, the provisions of subdivision (a)(1)(A)(i) of

this section shall apply only to domestic insurers licensed or hereafter licensed. Foreign and alien insurers licensed or hereafter licensed shall be exempt.

- (B) On and after January 1, 2002, licensed foreign and alien insurers may apply for release of an Arkansas deposit upon filing of evidence of a satisfactory deposit in the state or country of domicile. Further, the State Insurance Department shall specify a release of these foreign and alien company assets to be disbursed during the three-year period from January 1, 2002, through December 31, 2004;
- (2)(A)(i) Insurers applying for an original certificate of authority in Arkansas for kinds of insurance other than life, accident and health, surety, or any combination thereof, and insurers holding a valid certificate of authority who thereafter apply to transact any other or additional kinds of insurance excluding life, accident and health, surety, or any combination thereof, shall deposit, through the commissioner and subject to the conditions specified in § 23-63-909, securities eligible for deposit under § 23-63-903 and having at all times a market value of not less than one hundred thousand dollars (\$100,000), conditioned for the payment of policyholders and creditors of the insurer in this state and the prompt payment of all claims arising and accruing to any person in this state.
 - (ii) On and after January 1, 2002, the provisions of subdivision (a)(2)(A)(i) of this section shall apply only to domestic insurers licensed or hereafter licensed. Foreign and alien insurers licensed or hereafter licensed shall be exempt.
- (B) On and after January 1, 2002, licensed foreign and alien insurers may apply for release of an Arkansas deposit upon filing of evidence of a satisfactory deposit in the state or country of domicile. Further, the department shall specify a release of these foreign and alien company assets to be disbursed during the three-year period from January 1, 2002, through December 31, 2004;
- (3)(A) An insurer authorized to transact solely surety insurance in this state shall deposit through the commissioner and subject to the conditions provided in § 23-63-909 securities eligible for deposit under § 23-63-903 and having at all times a market value of not less than one hundred thousand dollars (\$100,000), conditioned for the payment of policyholders and creditors of the insurer in this state and prompt payment of policyholders and creditors of the insurer in this state and prompt payment of all claims arising and accruing to any obligee in this state.
- (B) All insurers authorized to transact the lines or classes of insurance under subdivision (a)(2) of this section or any combination thereof may also be authorized to transact surety insurance by depositing in accordance with this subsection additional securities with a market value of fifty thousand dollars (\$50,000).
- (C) Any authorized surety insurer also licensed as a professional bail bond company shall make and maintain an additional deposit, as required in § 17-19-101 et seq., applicable to bail bond transactions.
- (D)(i) On and after January 1, 2002, the provisions of this subdivision (a)(3) shall

apply only to domestic insurers licensed or hereafter licensed. Foreign and alien insurers licensed or hereafter licensed shall be exempt.

- (ii) On and after January 1, 2002, licensed foreign and alien insurers may apply for release of an Arkansas deposit upon filing of evidence of a satisfactory deposit in the state or country of domicile. Further, the department shall specify a release of these foreign and alien company assets to be disbursed during the three-year period from January 1, 2002, through December 31, 2004.
- (b) All deposits made through the commissioner and held in this state shall be subject to the applicable provisions of §§ 23-63-901 et seq., which refer to the administration of deposits.

23-63-207. Certificate of authority - Eligibility - Special surplus.

- (a) In addition to the minimum paid-in capital stock if stock insurers, or minimum surplus if mutual and reciprocal insurers, required by § 23-63-205, special surplus shall be possessed by insurers hereafter applying for original certificates of authority in this state as follows:
 - (1) All domestic stock insurers and domestic mutual legal reserve life and domestic reciprocal insurers, when first authorized to transact insurance in this state, shall have, if a stock insurer, surplus, or, if a mutual or reciprocal insurer, additional surplus, equal to not less than one hundred percent (100%) of the minimum paid-in capital stock or minimum surplus otherwise required under § 23-63-205 for the kinds of insurance to be transacted;
 - (2) Foreign and alien insurers that have actively transacted insurance as authorized insurers in one (1) or more states of the United States shall possess, when first authorized in this state, surplus or additional surplus equal to not less than one hundred percent (100%) of the minimum paid-in capital stock if a stock insurer, or minimum surplus if a mutual or reciprocal insurer, otherwise required under § 23-63-205.
- (b) As to all insurers referred to in subdivisions (a)(1) and (2) of this section, and as to currently authorized insurers seeking additional authority in this state, if, after issuance of its original certificate of authority to transact insurance in this state, the insurer requests authority to transact additional kinds of insurance, the request shall not be authorized unless the insurer then possesses special surplus or additional surplus in such an amount as would be required under this section as for an original certificate of authority covering the kinds of insurance the insurer then proposes to transact.
- (c) On and after January 1, 1996, as to all domestic stock and domestic mutual and domestic reciprocal insurers currently licensed or obtaining original licensure on and after January 1, 1996, the insurer shall maintain a minimum special surplus of not less than fifteen percent (15%) of the paid-in capital, if a stock insurer, or fifteen percent (15%) of surplus, if a mutual or reciprocal insurer, as reported in its last preceding annual statement. The Insurance Commissioner in his or her discretion may allow domestic insurers to augment special surplus in increments over a period of up to five (5) years to achieve compliance with the minimum amounts required herein, if

immediate compliance with this subsection would cause the domestic insurer to be impaired or insolvent.

- (d) In his or her discretion, the commissioner may require an insurer applying for its original certificate of authority to possess and maintain additional special surplus, in addition to that required by this subchapter, based on the financial condition of the insurer or the types, volume, or nature of the business transacted by the insurer.

23-63-208. Certificate of authority - Eligibility - Lloyd's plan insurers.

- (a) Foreign Lloyd's plan insurers which held certificates of authority to transact insurance in this state immediately prior to January 1, 1960, may continue to be so authorized while maintaining surplus as required under § 23-63-205(b) of foreign mutual insurers transacting like kinds of insurance and while otherwise in compliance with the Arkansas Insurance Code.
- (b) Any other foreign Lloyd's plan insurer may hereafter be authorized to transact in this state any or all kinds of insurance other than life, title, or surety insurance while otherwise in compliance with the Arkansas Insurance Code and while maintaining trusted assets within the United States for the protection of its United States policyholders or policyholders and creditors, under trust arrangements and with a trust institution satisfactory to the Insurance Commissioner, of not less than five million dollars (\$5,000,000), and of which at least one million dollars (\$1,000,000) represents an excess of such assets over the liabilities of the insurer as to its insurance transactions in the United States.

23-63-209. Certificate of authority - Application.

- (a) To apply for an original certificate of authority, an insurer shall file with the Insurance Commissioner its application therefor, accompanied by the applicable fees as specified in § 23-61-401, showing its name, location of its home office or principal office in the United States, if an alien insurer, kinds of insurance to be transacted, state or country of domicile, and such additional information as the commissioner may reasonably require together with, but not limited to, the following documents, as applicable:
 - (1) A copy of its corporate charter or articles of incorporation with all amendments thereto, certified by the public officer with whom the originals are on file in the state or country of domicile;
 - (2) If a mutual insurer, a copy of its bylaws, as amended, certified by its secretary or other officer having custody thereof;
 - (3) If a foreign reciprocal insurer, copies of the power of attorney of its attorney in fact and, if a separate instrument, its subscribers' agreement, certified by its attorney in fact; and if a domestic reciprocal insurer, the declaration provided for by § 23-70-106;
 - (4) A copy of its financial statement as of December 31, next preceding, sworn to by at least two (2) executive officers of the insurer or certified by the public insurance supervisory officials of the insurer's state of domicile or of entry into the United States. The insurer may use the form of statement currently approved by the National Association of Insurance Commissioners or its successor

organization;

- (5) A copy of the report of last examination, if any, made of the insurer, certified by the insurance supervisory official of its state of domicile or of entry into the United States;
 - (6) On and after January 1, 2003, registration of registered agents for service of process to be made pursuant to §§ 23-63-301 et seq.;
 - (7) If a foreign insurer, a certificate of the public official having supervision of insurance in its state or country of domicile showing that it is authorized to transact the kinds of insurance proposed to be transacted in this state;
 - (8) If an alien insurer, a copy of the appointment and authority of its United States manager, certified by its officer having custody of its records;
 - (9) Any bond, deposit, or evidence of deposit in another state, as required under § 23-63-206;
 - (10) Specimen copies of policies proposed to be offered in this state; and
 - (11) A detailed digest of the company history evidencing successful operation, with reference to insurance in force, claims record, and such other data as the commissioner may request.
- (b) Before granting a certificate of authority to an insurance company, the commissioner shall be satisfied, by such examination as he or she deems necessary to make and by review of such evidence as he or she deems necessary to require, that the company is qualified under the laws of this state to transact business in this state. The costs of any examinations will be reimbursed pursuant to § 23-61-206.

23-63-210. Certificate of authority - Issuance.

- (a) The certificate of authority, if issued, shall specify the kind or kinds of insurance the insurer is authorized to transact in Arkansas. At the insurer's request, the Insurance Commissioner may issue a certificate of authority limited to particular types of insurance or insurance coverage within the scope of a kind of insurance as defined in §§ 23-62-101 et seq., 23-62-201, 23-62-202, 23-62-204, 23-62-205, and 23-63-701.
- (b) Although issued to the insurer, the certificate of authority is at all times the property of the State of Arkansas. Upon any expiration, suspension, or termination of the certificate, the insurer shall promptly deliver the certificate of authority to the commissioner.

23-63-211. Certificate of authority - Continuance, expiration, amendment, or surrender.

- (a) Certificates of authority issued or renewed under the Arkansas Insurance Code shall continue in force as long as the insurer is entitled thereto under the Arkansas Insurance Code and until suspended, revoked, or otherwise terminated. However, they are subject to continuance of the certificate by the insurer each year by:
 - (1) Payment prior to April 15 of the continuation fee provided in § 23-61-401;
 - (2) Due filing by the insurer of its annual statement for the calendar year preceding as required under § 23-63-216; and
 - (3) Payment by the insurer of applicable taxes, fees, and assessments, as well as

timely filing of supporting annual and quarterly statements and other required filings with respect to the preceding calendar year, as required under the Arkansas Insurance Code.

- (b)(1) If not so continued by the insurer, its certificate of authority shall expire as of midnight on the April 30 next following the failure of the insurer so to continue it in force.
- (2) If for any reason the insurer is not entitled to continuation of its certificate of authority, the Insurance Commissioner may refuse to continue the certificate, and the certificate of authority shall expire as stated in this subsection.
- (3) The commissioner shall promptly notify the insurer of the occurrence of any failure or condition resulting in impending expiration of its certificate of authority.
- (c) The commissioner may, in his or her discretion, reinstate a certificate of authority which the insurer has inadvertently permitted to expire, after the insurer has fully cured all its failures which resulted in the expiration, and upon payment by the insurer of the fee for reinstatement in the amount provided in § 23-61-401. Otherwise, the insurer shall be granted another certificate of authority only after filing application therefor and meeting all other requirements as for an original certificate of authority in this state.
- (d) The commissioner may amend a certificate of authority at any time to accord with changes in the insurer's charter or insuring powers.
- (e) Any insurer desiring to surrender its certificate of authority, withdraw from this state, or discontinue the writing of certain classes of insurance in this state shall give ninety (90) days' notice in writing to the State Insurance Department and shall state in writing its reasons for such action. The commissioner may waive any part of the notice requirement.

23-63-212. Certificate of authority - Mandatory suspension or revocation.

- (a) The Insurance Commissioner shall suspend or revoke an insurer's certificate of authority:
 - (1) If the action is required by any provision of the Arkansas Insurance Code; or
 - (2) If the insurer no longer meets the requirements for the authority originally granted, on account of deficiency of assets or otherwise; or
 - (3) If the insurer's authority to transact insurance is suspended or revoked by its state of domicile, or state of entry into the United States if an alien insurer.
- (b)(1) Except in cases of insolvency or impairment of required capital or surplus, or suspension or revocation by another state as referred to in subdivision (a)(3) of this section, the commissioner shall give the insurer at least ten (10) days' written notice in advance of any suspension or revocation under this section.
- (2) If the insurer requests a hearing thereon within the ten (10) days, the request shall automatically stay the commissioner's proposed action until his or her order is made on the hearing.

23-63-213. Certificate of authority - Suspension or revocation for certain violations.

- (a) The Insurance Commissioner shall, after a hearing thereon, suspend or revoke an insurer's certificate of authority if he or she finds that the insurer:
 - (1)(A) Is in unsound condition, or is in such condition or is using such methods and practices in the conduct of its business, as to render its further transaction of insurance in Arkansas hazardous or injurious to its policyholders or to the public.
 - (B) For the purposes of this section, the commissioner may consider, among other factors, the present, past, and future trends in the financial condition of the insurer that could affect the solvency of the insurer;
 - (2) Has refused to be examined or to produce its accounts, records, and files for examination, or if any of its officers have refused to give information with respect to its affairs, when required by the commissioner;
 - (3) Has failed to pay any final judgment rendered against it within thirty (30) days;
 - (4) Is affiliated with and under the same general management or interlocking directorate or ownership as another insurer which transacts direct insurance in Arkansas without having a certificate of authority therefor, except as permitted as to surplus lines insurers under § 23-65-101 et seq.; or
 - (5) Has knowingly, or with reckless disregard of same, violated or failed to comply with any applicable provision of the Arkansas Insurance Code, or with any lawful rule, regulation, or order of the commissioner.
- (b) In his or her discretion and without advance notice or a hearing thereon, the commissioner may immediately suspend the certificate of authority of any foreign insurer as to which proceedings for receivership, conservatorship, rehabilitation, or other delinquency proceedings have been commenced in any state by the authorized official of the domiciliary state of the insurer.
- (c) If the commissioner finds that one (1) or more grounds exist for the suspension or revocation of any certificate of authority, the commissioner may in his or her discretion:
 - (1) In lieu of suspension, impose upon the holder of the certificate of authority an administrative penalty in the amount of five thousand dollars (\$5,000); or
 - (2) In lieu of revocation, impose upon the holder of the certificate of authority an administrative penalty in the amount of ten thousand dollars (\$10,000).

23-63-214. Certificate of authority - Notice of suspension or revocation.

- (a) Suspension or revocation of an insurer's certificate of authority shall be by the Insurance Commissioner's order given to the insurer as provided by § 23-61-109.
- (b) The commissioner shall promptly also give notice of the suspension or revocation to the insurer's agents in this state of record in the commissioner's office.
- (c) The insurer shall not solicit or write any new business in this state during the period of any suspension or revocation. Provided, however, the insurer shall be allowed to renew and service existing policies and contracts during the period of any suspension, unless limited by the commissioner by his or her order or by court order.

23-63-215. Certificate of authority - Period of suspension - Reinstatement.

- (a) Suspension of an insurer's certificate of authority shall be for such period as is fixed

by the Insurance Commissioner in the order of suspension, but not to exceed one (1) year, unless the commissioner shortens or rescinds the suspension or the order upon which the suspension is based is modified, rescinded, or reversed.

- (b) During the period of suspension, the insurer shall file its annual statement and pay fees, licenses, and taxes as required under the Arkansas Insurance Code as if the certificate had continued in full force.
- (c) Upon expiration of the suspension period, if within the period the certificate of authority has not otherwise terminated, the insurer's certificate of authority shall automatically reinstate unless the commissioner finds that the causes of the suspension have not been removed, or that the insurer is otherwise not in compliance with the requirements of the Arkansas Insurance Code, and of which the commissioner shall give the insurer notice not less than thirty (30) days in advance of the expiration of the suspension period. If not so automatically reinstated, the certificate of authority shall be deemed to have expired as of the end of the suspension period or upon failure of the insurer to continue the certificate during the suspension period, whichever event first occurs.
- (d) Upon reinstatement of the insurer's certificate of authority, the authority of its agents in this state to represent the insurer shall likewise reinstate. The commissioner shall promptly notify the insurer and its agents in this state of the reinstatement.

23-63-216. Annual statement and other information.

- (a)(1) Annually on or before March 1, or within any extension of time which the Insurance Commissioner for good cause may have granted, each authorized insurer shall file with the commissioner a full and true statement of its financial condition, transactions, and affairs as of the December 31 preceding.
- (2) The statement shall be the appropriate and most recent National Association of Insurance Commissioners':
 - (A) "Annual Statement Blank For Life And Accident And Health";
 - (B) "Property And Casualty Annual Statement Blank";
 - (C) "Title Insurance Annual Statement Blank";
 - (D) "Annual Statement Blank for Health" for use by hospital, medical, and dental service or indemnity corporations;
 - (E) "Fraternal Annual Statement Blank";
 - (F) "Annual Statement Blank for Health" for health insurers or health maintenance organizations and others; or
 - (G)(i) Other National Association of Insurance Commissioners' convention blank as appropriate, which shall be prepared in accordance with the most recent and appropriate, companion National Association of Insurance Commissioners' "Annual Statement Instructions" and follow those accounting practices and procedures prescribed by the most recent and appropriate companion National Association of Insurance Commissioners' Accounting Practices and Procedures Manual.
 - (ii) The commissioner is authorized to allow a life insurer or property and casualty insurer whose insurance premiums and required statutory reserves for accident and health insurance constitute at least ninety-five percent

(95%) of its total premium considerations or total statutory required reserves, respectively, to file the "Annual Statement Blank for Health" as its annual statement with the companion quarterly statement forms.

- (3) The insurer shall furnish all information as called for by the applicable portions of the National Association of Insurance Commissioners' annual statement convention blank, and casualty and surety insurance companies shall include a report on income derived from investment of unearned premiums.
- (4) The National Association of Insurance Commissioners' annual statement convention blank shall be verified by the oath of the insurer's president or vice president and secretary or actuary as applicable or, if a reciprocal insurer, by the oath of its attorney in fact or its like officers if a corporation.
- (b) The statement of an alien insurer shall be verified by the oath of the insurer's United States manager or other officer authorized and shall relate only to its transactions and affairs in the United States unless the commissioner requires otherwise. If the commissioner requires a statement as to the alien insurer's affairs throughout the world, the insurer shall file the statement with the commissioner as soon as reasonably possible.
- (c) The commissioner may waive any requirement under this section for verification under oath.
- (d) The commissioner shall furnish to each domestic insurer two (2) copies of the forms on which the annual statement is to be made.
- (e)(1) The commissioner may refuse to continue the insurer's certificate of authority, as provided in § 23-63-211, or in his or her discretion may suspend or revoke the certificate of authority of an insurer failing to file its annual statement when due.
 - (2) In addition, the insurer shall be subject to a penalty of one hundred dollars (\$100) for each day of delinquency. The penalty shall be collected by the commissioner, if necessary, by a civil suit therefor brought by the commissioner in the Circuit Court of Pulaski County, unless the penalty is waived by the commissioner upon a showing by the insurer of good cause for its failure to file its report on or before the date due.
- (f) At the time of filing, the insurer shall pay the fee for filing its annual statement as prescribed by § 23-61-401.
- (g)(1) In addition to information called for and furnished in connection with its annual statement, an insurer shall furnish to the commissioner as soon as reasonably possible such information with respect to any of its transactions or affairs as the commissioner may from time to time request in writing.
 - (2) In accordance with the specifications applicable to annual financial statements, each authorized domestic insurer and health maintenance organization and hospital or medical service corporation, or other domestic licensee so directed by the department in writing, shall also file with the commissioner a quarterly financial statement on a form prescribed by the commissioner, not later than forty-five (45) days following the end of each of the first three (3) calendar quarters of each year, excepting the fourth quarter of each calendar year which shall be reconciled in the annual financial statement.
- (3) The filing specifications of this section for annual financial reports shall apply to

quarterly financial reports.

- (h)(1) On or before March 1, 1992, and annually on or before March 1 of each year thereafter, each domestic, foreign, and alien insurer authorized to transact business in this state shall file with the National Association of Insurance Commissioners a copy of its annual statement convention blank, along with such additional filings as prescribed by the commissioner as of the December 31 preceding. The information filed with the National Association of Insurance Commissioners shall be in the same format and scope as that required by the commissioner and shall include the signed jurat page and the actuarial certification. Any amendments and addendums to the annual statement filing subsequently filed with the commissioner shall also be filed with the National Association of Insurance Commissioners.
- (2) Foreign insurers that are domiciled in a state which has a law substantially similar to this subsection shall be deemed in compliance with these requirements.
- (3) In the absence of actual malice, members of the National Association of Insurance Commissioners, their duly authorized committees, subcommittees, task forces, delegates, National Association of Insurance Commissioners' employees, and all others charged with the responsibility of collecting, reviewing, analyzing, and disseminating the information developed from the filing of the annual statement convention blanks shall be acting as agents of the commissioner under the authority of this subsection and shall not be subject to civil liability for libel, slander, or any other cause of action by virtue of their collection, review, and analysis or dissemination of the data and information collected from the filings required hereunder.
- (4) The commissioner may impose the sanctions set out in subsection (e) of this section on any insurer failing to file its annual statement with the National Association of Insurance Commissioners when due or within any extension of time which the commissioner for good cause may have granted.
- (i)(1) Each domestic insurer authorized to transact business in this state shall include in its annual statement an opinion, as is relevant to the lines of business the domestic insurer is authorized to write, on its life and health policy and claim reserves and its property and liability loss and loss adjustment expense reserves by a qualified actuary.
- (2) Such opinion shall be in the format prescribed by the National Association of Insurance Commissioners' Annual Statement Instruction Handbook.
- (j)(1) The National Association of Insurance Commissioners Annual Statement Diskette Filing Specifications are hereby adopted and incorporated by reference.
- (2) Each authorized insurer shall submit its annual and quarterly statement information in manual and computer-readable form using the diskette medium.

23-63-217. [Repealed.]

23-63-218. Change of domicile.

- (a) Any insurer which is organized under the laws of any other state and is admitted to do business in this state for the purpose of writing insurance may become a domestic insurer by complying with all of the requirements of law relative to the organization

and licensing of a domestic insurer of the same type and by designating its principal place of business at a place in this state. The domestic insurer will be entitled to like certificates and licenses to transact business in this state and shall be subject to the authority and jurisdiction of this state. An insurer which changes its status from foreign to domestic shall have all the rights, titles, and interests in the assets of the original corporation, as well as all of its liabilities and obligations. The insurer shall be recognized as an insurer formed under the laws of this state as of the date of its incorporation in its original domiciliary state.

- (b)(1) Any domestic insurer may, upon the approval of the Insurance Commissioner, transfer its domicile to any other state in which it is admitted to transact the business of insurance. Upon the transfer, the insurer shall cease to be a domestic insurer and shall be admitted to this state if qualified as a foreign insurer.
- (2) The commissioner shall approve any proposed transfer unless he or she shall determine that the transfer is not in the interest of the policyholders of this state.
- (c)(1) The certificate of authority, agents, appointments and licenses, rates, and other items which the commissioner allows, in his or her discretion, which are in existence at the time any insurer licensed to transact the business of insurance in this state transfers its corporate domicile to this or any other state by merger, consolidation, or any other lawful method shall continue in full force and effect upon the transfer if the insurer remains qualified to transact the business of insurance in this state.
- (2) All outstanding policies of any transferring insurer shall remain in full force and effect and need not be endorsed as to the new name of the company or its new location unless so ordered by the commissioner.
- (3) Every transferring insurer shall file new policy forms with the commissioner on or before the effective date of the transfer but may use existing policy forms with appropriate endorsements if allowed by, and under such conditions as approved by, the commissioner.
- (4) However, every transferring insurer shall notify the commissioner of the details of the proposed transfer and shall file promptly the resulting amendments to corporate documents filed or required to be filed with the commissioner.
- (d) The commissioner of this state may promulgate rules and regulations to carry out the purposes of this section.

Subchapter 3. Service of Process.

23-63-301. Registered office and registered agent for foreign or alien insurer and domestic reciprocal insurers.

Each foreign insurer applying for a certificate of authority to transact business in Arkansas and every domestic reciprocal insurer must designate and continuously maintain in the state:

- (1) A registered office that may be the same as any of its places of business; and
- (2) A registered agent, who may be:
 - (A) An individual who resides in this state and whose business office is identical with the registered office;

- (B) A state bank, domestic corporation, or not-for-profit corporation whose business office is identical with the registered office; or
 - (C) A foreign corporation or foreign not-for-profit corporation authorized to transact business in this state whose business office is identical with the registered office.
- (3)(A) On and after January 1, 2002, all foreign and alien insurers and all domestic reciprocal insurers holding a subsisting certificate of authority upon August 13, 2001, shall be subject to the provisions of this subchapter, and no later than January 1, 2003, shall file with the Insurance Commissioner the information required in this subchapter to designate an Arkansas-registered agent.
- (B) In the event no registered agent has yet been selected and appointed on the commissioner's list for any foreign or alien insurer or domestic reciprocal insurer licensed by the commissioner, service may be processed through the commissioner as agent or by other methods of service provided under Arkansas law to be effective until a new registered agent has been appointed on the records of the commissioner.
- (4) In this subchapter licensed foreign insurers shall be deemed to include licensed alien insurers.

23-63-302. Change of registered office or registered agent.

- (a) A licensed foreign or alien insurer or a licensed domestic reciprocal insurer may change its registered office or registered agent by delivering to the Insurance Commissioner for filing a statement of change that sets forth:
- (1) Its name;
 - (2) The street address of its current registered office;
 - (3) If the current registered office is to be changed, the street address of its new registered office;
 - (4) The name of its current registered agent;
 - (5) If the current registered agent is to be changed, the name of its new registered agent with the new agent's written consent, either on the statement or attached to it, to the appointment; and
 - (6) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.
- (b) If a registered agent changes the street address of his or her business office, he or she may change the street address of the registered office of any foreign insurer holding a certificate of authority to transact business in Arkansas or any domestic reciprocal insurer for which he or she is the registered agent by notifying the insurer in writing of the change and signing, either manually or in facsimile, and delivering to the commissioner for filing a statement of change that complies with the requirements of subsection (a) of this section and recites that the insurer has been notified of the change.

23-63-303. Resignation of registered agent.

- (a) The registered agent of a licensed foreign insurer or a domestic reciprocal insurer may resign his or her agency appointment by signing and delivering to the Insurance Commissioner for filing the original and two (2) exact or conformed copies of a statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued.
- (b) After filing the statement, the commissioner shall attach the filing receipt to one (1) copy and mail the copy and receipt to the registered office if not discontinued. The commissioner shall mail the other copy to the insurer at its principal office address shown in its most recent annual report.
- (c) The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

23-63-304. Service of process of foreign or alien insurers or domestic reciprocal insurers.

- (a) The registered agent of a licensed foreign insurer or a licensed domestic reciprocal insurer is the insurer's agent for service of process, notice, or demand required or permitted by law to be served on the insurer.
- (b) A licensed foreign insurer or a licensed domestic reciprocal insurer may be served by registered or certified mail, return receipt requested, addressed to the president or the secretary at its principal office shown in its application for a certificate of authority or in its most recent annual statement if the insurer:
 - (1) Has no registered agent or its registered agent cannot with reasonable diligence be served;
 - (2) Has withdrawn from transacting business in this state under this subchapter; or
 - (3) Has had its certificate of authority revoked under this subchapter.
- (c) Service is perfected under subsection (b) of this section at the earliest of:
 - (1) The date the insurer receives the mail;
 - (2) The date shown on the return receipt, if signed on behalf of the insurer; or
 - (3) Five (5) calendar days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.
- (d) This section does not prescribe the only means, or necessarily the required means, of serving a licensed foreign insurer or a licensed domestic reciprocal insurer.

**Subchapter 4.
Resident Agents and Countersignatures.**

§ 23-63-401 - 23-63-404. [Repealed.]

**Subchapter 5.
Insurance Holding Company Regulatory Act.**

23-63-501. Title.

This subchapter may be cited as the "Insurance Holding Company Regulatory Act".

23-63-502. Legislative findings.

- (a)(1) It is found and declared that it may not be inconsistent with the public interest and the interest of policyholders and shareholders to permit insurers to:
 - (A) Engage in activities which would enable them to make better use of management skills and facilities;
 - (B) Diversify into new lines of business through acquisition or organization of subsidiaries;
 - (C) Have free access to capital market which could provide funds for insurers to use in diversification programs;
 - (D) Implement sound tax planning conclusions; and
 - (E) Serve the changing needs of the public and adapt to changing conditions of the social, economic, and political environment so that insurers are able to compete effectively and to meet the growing public demand for institutions capable of providing a comprehensive range of financial services.
- (2) It is further found and declared that the public interest and the interests of policyholders and shareholders are or may be adversely affected when:
 - (A) Control of an insurer is sought by persons who would utilize the control adversely to the interests of policyholders or shareholders;
 - (B) Acquisition of control of an insurer would substantially lessen competition or create a monopoly in the insurance business in this state;
 - (C) An insurer which is part of a holding company system is caused to enter into transactions or relationships with affiliated companies on terms which are not fair and reasonable; or
 - (D) An insurer pays dividends to shareholders which jeopardize the financial condition of the insurer.
- (3) It is declared that the policies and purposes of this subchapter are to promote the public interest by:
 - (A) Facilitating the achievement of the objectives enumerated in subsection (a) of this section;
 - (B) Requiring disclosure of pertinent information relating to changes in control of an insurer;
 - (C) Requiring disclosure by an insurer of material transactions and relationships between the insurer and its affiliates, including dividends to shareholders paid by the insurer; and
 - (D) Providing standards governing material transactions between the insurer and its affiliates.
- (4) It is further declared that it is desirable to prevent unnecessary multiple and conflicting regulation of insurers.
- (b) Therefore, this state shall exercise regulatory authority over domestic insurers and, unless otherwise provided, not over nondomestic insurers, with respect to the matters contained herein.

23-63-503. Definitions.

As used in this subchapter, unless the context otherwise requires:

- (1) An "affiliate" of, or person "affiliated" with, a specific person, is a person that directly, or indirectly through one (1) or more intermediaries, controls, or is controlled by, or is under common control with, the person specified;
- (2) The term "control", including the terms "controlling", "controlled by", and "under common control with" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing ten percent (10%) or more of the voting securities of any other person. This presumption may be rebutted by a showing that control does not exist in fact. The Insurance Commissioner may, after furnishing all persons in interest notice and opportunity to be heard, determine that control exists in fact, notwithstanding the absence of a presumption to that effect;
- (3) An "insurance holding company system" consists of two (2) or more affiliated persons, one (1) or more of which is an insurer. However, for purposes of this subchapter, the term shall not be deemed to include a domestic insurer or domestic holding company system authorized and doing business solely in this state and which is not affiliated with a foreign or alien insurer;
- (4) The term "insurer" shall have the same meaning as set forth in § 23-60-102(2), except that it shall not include:
 - (A) Agencies, authorities, or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state;
 - (B) Fraternal benefit societies; or
 - (C) Nonprofit medical and hospital service associations;
- (5)(A) A "person" is a corporation, a partnership, an association, a joint-stock company, a business trust, an unincorporated organization, or any similar entity or any combination of the foregoing acting in concert, but shall not include any securities broker performing no more than the usual and customary broker's function.
 - (B) A "person" is also an individual, only insofar as that term is used in § 23-63-506, and this subdivision (5)(B) is not intended to affect in any way the exemption of domestic insurers or domestic holding company systems under § 23-63-504;
- (6) A "subsidiary" of a specified person is an affiliate controlled by the person directly or indirectly through one (1) or more intermediaries;
- (7) A "security holder" of a specified person is one who owns any security of such a person, including common stock, preferred stock, debt obligations, and any other security convertible into or evidencing the right to acquire any of the foregoing; and
- (8) The term "voting security" shall include any security convertible into or

evidencing a right to acquire a voting security.

23-63-504. Applicability.

- (a) It is found and declared that the provisions of this subchapter are unnecessary and undesirable insofar as domestic insurers or domestic holding company systems, authorized and doing business solely in this state and which are not affiliated with a foreign or alien insurer, are concerned.
- (b) Therefore, notwithstanding other provisions in this subchapter to the contrary, this subchapter shall not apply, in any manner, to any domestic insurer or domestic holding company system authorized and doing business solely in this state and which is not affiliated with a foreign or alien insurer. However, such domestic insurers or domestic holding company systems which subsequently become authorized or approved to do business in other states or jurisdictions shall, not later than sixty (60) days from the effective date of such authorization or approval, register with the Insurance Commissioner in compliance with § 23-63-514, and thereafter as provisions of this subchapter require.

23-63-505. Subsidiaries of insurer.

- (a) **Authorization.** Any domestic insurer, subject to this subchapter, either by itself or in cooperation with one (1) or more persons, may organize or acquire one (1) or more subsidiaries.
- (b) **Qualification of Investment - When Determined.** Whether any investment pursuant to subsection (a) of this section meets the applicable requirements thereof is to be determined immediately after the investment is made, taking into account the then-outstanding principal balance on all previous investments in debt obligations and the value of all previous investments in equity securities as of the date they were made.
- (c) **Cessation of Control.** If an insurer ceases to control a subsidiary, it shall dispose of any investment therein made pursuant to this section within three (3) years from the time of the cessation of control or within such further time as the Insurance Commissioner may prescribe unless, at any time after the investment shall have been made, the investment shall have met the requirements for investment under any other section of this subchapter and the insurer has notified the commissioner thereof.

23-63-506. Control of or merger with domestic insurer - Filing requirements.

- (a) No person other than the issuer shall make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities for, seek to acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the consummation thereof, the person would, directly or indirectly, or by conversion or by exercise of any right to acquire, be in control of the insurer. No person shall enter into an agreement to merge with or otherwise to acquire control of a domestic insurer or any person controlling a domestic insurer unless, at the time any offer, request, or invitation is made or any agreement is entered into, or prior to the acquisition of the securities if no offer or agreement is involved, the person has filed with the Insurance Commissioner and has sent to the

insurer, and the insurer has sent to its shareholders, a statement containing the information required by this section and §§ 23-63-507 - 23-63-513 and such an offer, request, invitation, agreement, or acquisition has been approved by the commissioner in the manner prescribed in this section and §§ 23-63-507 - 23-63-513.

- (b)(1) For the purposes of this section and §§ 23-63-507 - 23-63-513, a domestic insurer shall include any person controlling a domestic insurer unless the person, as determined by the commissioner, is either directly or through its affiliates primarily engaged in business other than the business of insurance. However, the person shall file a preacquisition notification with the commissioner containing the information set forth in § 23-63-527(b), sixty (60) days prior to the proposed effective date of the acquisition. Failure to file is subject to § 23-63-529(c).
- (2) For the purposes of this section, "person" shall not include any securities broker holding, in the usual and customary brokers' function, less than twenty percent (20%) of the voting securities of an insurance company or of any person which controls an insurance company.

23-63-507. Control of or merger with domestic insurer - Exceptions.

The provisions of §§ 23-63-506 - 23-63-513 shall not apply to:

- (1) Any offers, requests, invitations, agreements, or acquisitions by the person referred to in § 23-63-506 of any voting security referred to in that section which, immediately prior to the consummation of the offer, request, invitation, agreement, or acquisition, was not issued and outstanding and the issuance of which will not have the effect of changing or influencing the control of a domestic insurer;
- (2) Any transaction which is subject to the provisions of §§ 23-69-142 - 23-69-145 of the laws of this state, dealing with the merger or consolidation of two (2) or more insurers;
- (3) Any offer, request, invitation, agreement, or acquisition which the commissioner, by order, shall exempt therefrom as:
- (A) Not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic insurer; or
- (B) As otherwise not comprehended within the purposes of §§ 23-63-506 - 23-63-513.

23-63-508. Control of or merger with domestic insurer - Content of statement.

- (a) The statement to be filed with the Insurance Commissioner pursuant to this section shall be made under oath or affirmation and shall contain the following information:
- (1) The name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in § 23-63-506 is to be effected, hereinafter called "acquiring party", and:
- (A) If the person is an individual, his or her principal occupation and all offices and positions held during the past five (5) years and any conviction of crimes other than minor traffic violations during the past ten (10) years;
- (B) If the person is not an individual, a report of the nature of its business operations during the past five (5) years or for such lesser period as the person

and any predecessors thereof shall have been in existence; an informative description of the business intended to be done by the person and the person's subsidiaries and a list of all individuals who are or who have been selected to become directors or executive officers of the person, or who perform or will perform functions appropriate to the positions. The list shall include for each individual the information required by subdivision (1)(A) of this subsection;

- (2) The source, nature, and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction wherein funds were or are to be obtained for any such purpose, and the identity of persons furnishing the consideration. However, where a source of the consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential if the person filing the statement so requests;
- (3) Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five (5) fiscal years of each acquiring party, or for such lesser period as the acquiring party and any predecessors thereof shall have been in existence, and similar unaudited information as of a date not earlier than ninety (90) days prior to the filing of the statement;
- (4) Any plans or proposals which each acquiring party may have to liquidate the insurer, to sell its assets or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management;
- (5) The number of shares of any security referred to in § 23-63-506 which each acquiring party proposes to acquire, the terms of the offer, request, invitation, agreement, or acquisition referred to in § 23-63-506, and a statement as to the method by which the fairness of the proposal was arrived at;
- (6) The amount of each class of any security referred to in § 23-63-506 which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party;
- (7) A full description of any contracts, arrangements, or understandings with respect to any security referred to in § 23-63-506 in which any acquiring party is involved, including, but not limited to, transfer of any of the securities, joint ventures, loans or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. The description shall identify the persons with whom the contracts, arrangements, or understandings have been entered into;
- (8) A description of the purchase of any security referred to in § 23-63-506 during the twelve (12) calendar months preceding the filing of the statement by any acquiring party, including the dates to purchase, names of the purchasers, and consideration paid or agreed to be paid therefor;
- (9) A description of any recommendations to purchase any security referred to in § 23-63-506 made during the twelve (12) calendar months preceding the filing of the statement by any acquiring party or by anyone based upon interviews or at the suggestion of the acquiring party;
- (10) Copies of all tender offers for, requests or invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities referred to in §

- 23-63-506 and, if distributed, of additional soliciting material relating thereto;
- (11) The terms of any agreement, contract, or understanding made with any broker-dealer as to solicitation of securities referred to in § 23-63-506 for tender, and the amount of any fees, commissions, or other compensation to be paid to broker-dealers with regard thereto; and
 - (12) Such additional information as the commissioner may, by rule or regulation, prescribe as necessary or appropriate for the protection of policyholders and security holders of the insurer or in the public interest.
- (b)(1) If the person required to file the statement referred to in § 23-63-506 is a partnership, limited partnership, syndicate, or other group, the commissioner may require that the information called for by subdivisions (a)(1)-(12) of this section shall be given with respect to each partner of the partnership or limited partnership, each member of the syndicate or group, and each person who controls the partner or member.
- (2) If any partner, member, or person is a corporation or the person required to file the statement referred to in § 23-63-506 is a corporation, the commissioner may require that the information called for by subdivisions (a)(1)-(12) of this section shall be given with respect to the corporation, each officer and director of the corporation, and each person who is directly or indirectly the beneficial owner of more than ten percent (10%) of the outstanding voting securities of the corporation.
- (c) If any material change occurs in the facts set forth in the statement filed with the commissioner and sent to the insurer pursuant to §§ 23-63-506 - 23-63-513, an amendment setting forth the change, together with copies of all documents and other material relevant to the change, shall be filed with the commissioner and sent to the insurer within two (2) business days after the person learns of the change. The insurer shall send the amendment to its stockholders.

23-63-509. Control of or merger with domestic insurer - Alternative filing materials.

If any offer, request, invitation, agreement, or acquisition referred to in § 23-63-506 is proposed to be made by means of a registration statement under the Securities Act of 1933 or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934 or under a state law requiring similar registration or disclosure, the person required to file the statement referred to in § 23-63-506 may utilize the documents in furnishing the information called for by that statement.

23-63-510. Control of or merger with domestic insurer - Approval by commissioner - Hearing.

- (a) The Insurance Commissioner shall approve any merger or other acquisition of control referred to in § 23-63-506 unless, after a public hearing thereon, he or she finds that:
 - (1) After change of control, the domestic insurer referred to in § 23-63-506 would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;

- (2) The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this state or tend to create a monopoly therein;
 - (3) The financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer or prejudice the interest of its policyholders or the interests of any remaining security holders who are unaffiliated with the acquiring party;
 - (4) The terms of the offer, request, invitation, agreement, or acquisition referred to in § 23-63-506 are unfair and unreasonable to the security holders of the insurer;
 - (5) The plans or proposals which the acquiring party has to liquidate the insurer, sell its assets, or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management are unfair and unreasonable to policyholders of the insurer and not in the public interest; or
 - (6) The competence, experience, and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control.
- (b)(1) The public hearing referred to in subsection (a) of this section shall be held within thirty (30) days after the statement required by § 23-63-506 is filed, and at least twenty (20) days' notice of the hearing shall be given by the commissioner to the person filing the statement.
- (2) Not less than seven (7) days' notice of the public hearing shall be given by the person filing the statement to the insurer and to the other persons as may be designated by the commissioner.
- (b)(3)(A) The commissioner shall make a determination within the sixty-day period preceding the effective date of the proposed transaction.
- (B) In connection with the change in control of the insurer, any determination by the commissioner that the person acquiring control of a domestic insurer shall be required to maintain or restore the capital of the insurer to the level required by the laws and regulations of this state shall be made not later than sixty (60) calendar days after the date of notification of the change in control submitted pursuant to § 23-63-506(b).
- (4) At the hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interests may be affected thereby shall have the right to present evidence, examine, and cross-examine witnesses, and offer oral and written arguments and, in connection therewith, shall be entitled to conduct discovery proceedings in the same manner as is presently allowed in the courts of this state.
- (5) All discovery proceedings shall be concluded not later than three (3) days prior to the commencement of the public hearing.

23-63-511. Control of or merger with domestic insurer - Mailings.

- (a) All statements, amendments, or other materials filed pursuant to § 23-63-506 or § 23-63-508 and all notices of public hearings held pursuant to § 23-63-510 shall be mailed by the insurer to its shareholders within five (5) business days after the insurer has received the statements, amendments, other material, or notices.

- (b) The expenses of mailing shall be borne by the person making the filing.
- (c) As security for the payment of the expenses, the person shall file with the Insurance Commissioner an acceptable bond or other deposit in an amount to be determined by the commissioner.

23-63-512. Control of or merger with domestic insurer - Jurisdiction of courts - Service of process.

- (a) The courts of this state are vested with jurisdiction over every person not resident, domiciled, or authorized to do business in this state who files a statement with the Insurance Commissioner under §§ 23-63-506 - 23-63-513 and over all actions involving that person arising out of violations of §§ 23-63-506 - 23-63-513.
- (b)(1) Each person shall be deemed to have performed acts equivalent to and constituting an appointment by the person of the commissioner to be his or her true and lawful attorney upon whom may be served all lawful process in any action, suit, or proceeding arising out of violations of §§ 23-63-506 - 23-63-513.
- (2) Copies of all lawful process shall be served on the commissioner and transmitted by registered or certified mail by the commissioner to the person at the person's last known address.

23-63-513. Control of or merger with domestic insurer - Violations.

The following shall be violations of §§ 23-63-506 - 23-63-513:

- (1) The failure to file any statement, amendment, or other materials required to be filed pursuant to § 23-63-506 or § 23-63-508; or
- (2) The effectuation or any attempt to effectuate an acquisition of control of, or merger with, a domestic insurer unless the Insurance Commissioner has given his or her approval thereto.

23-63-514. Registration of insurers.

(a) Registration.

- (1) Every insurer which is authorized to do business in this state and which is a member of an insurance holding company system shall register with the Insurance Commissioner, except:
 - (A) Foreign insurers subject to disclosure requirements and standards adopted by code or statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in this section; and
 - (B) Domestic insurers or domestic holding company systems authorized and doing business solely within this state and which are not affiliated with a foreign or alien insurer.
- (2) However, such domestic insurers or domestic holding company systems which subsequently become authorized or approved to do business in other states or jurisdictions shall, not later than sixty (60) days after admission or approval to transact business in such other states or jurisdictions, register with the commissioner in compliance with this section, and thereafter as the provisions of this subchapter require.

- (b) **Information and Form Required.** Every insurer subject to registration shall file a registration statement on a form prescribed by the National Association of Insurance Commissioners, which shall contain current information about:
- (1) The capital structure, general financial condition, and ownership and management of the insurer and any person controlling the insurer;
 - (2) The identity of every member of the insurance holding company system;
 - (3) The following agreements in force, relationships subsisting, and transactions currently outstanding between the insurer and its affiliates:
 - (A) Loans, other investments, purchases, sales, or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates;
 - (B) Purchases, sales, or exchanges of assets;
 - (C) Transactions not in the ordinary course of business;
 - (D) Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business;
 - (E) All management and service contracts and all cost-sharing arrangements;
 - (F) Reinsurance agreements covering all or substantially all of one (1) or more lines of insurance of the ceding company;
 - (G) Dividends and other distributions to shareholders; and
 - (H) Consolidated tax allocation agreements;
 - (4) Any pledge of the insurer's stock, including stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system; and
 - (5) Other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the commissioner.
- (c) **Materiality.** No information need be disclosed on the registration statement filed pursuant to subsection (b) of this section if the information is not material for the purposes of this section. Unless the commissioner by rule, regulation, or order provides otherwise, sales, purchases, exchanges, loans, or extensions of credit, or investments, involving one-half of one percent (.5%) or less of an insurer's admitted assets as of the December 31 next-preceding shall not be deemed material for purposes of this section.
- (d) **Amendments to Registration Statements.** Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions on amendment forms provided by the commissioner within fifteen (15) days after the end of the month in which it learns of each material change or addition. However, subject to § 23-63-515(c), each registered insurer shall so report all dividends and other distributions to shareholders within two (2) business days following the declaration thereof. Registered insurers shall annually refile an amended and restated registration statement in such manner and at such times as the commissioner shall prescribe.
- (e) **Termination of Registration.** The commissioner shall terminate the registration of

any insurer which demonstrates that it no longer is a member of an insurance holding company system.

- (f) **Consolidated Filing.** The commissioner may require or allow two (2) or more affiliated insurers subject to registration hereunder to file a consolidated registration statement or consolidated reports amending their consolidated registration statement or their individual registration statements.
- (g) **Alternative Registration.** The commissioner may allow an insurer which is authorized to do business in this state and which is part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under subsection (a) of this section and to file all information and material required to be filed under this section.
- (h) **Exemptions.** The provisions of this section shall not apply to any insurer, information, or transaction if, and to the extent that, the commissioner by rule, regulation, or order shall exempt it from the provisions of this section.
- (i)(1) **Disclaimer.** Any person may file with the commissioner a disclaimer of affiliation with any authorized insurer, or the disclaimer may be filed by the insurer or any member of an insurance holding company system.
 - (2) The disclaimer shall fully disclose all material relationships and bases for affiliation between the person and the insurer as well as the basis for disclaiming the affiliation.
 - (3) After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under this section which may arise out of the insurer's relationship with the person unless and until the commissioner disallows the disclaimer.
 - (4) The commissioner shall disallow a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support the disallowance.
- (j) **Information of Insurers.** Any person within an insurance holding company system subject to registration shall be required to provide complete and accurate information to an insurer, where such information is reasonably necessary to enable the insurer to comply with the provisions of this subchapter.
- (k) **Violations.** The failure to file a registration statement or any amendment thereto required by this section within the time specified for the filing shall be a violation of this section.

23-63-515. Standards.

- (a)(1) Material transactions by insurers registered with the Insurance Commissioner under § 23-63-514 with their affiliates shall be subject to the following standards:
 - (A) The terms shall be fair and reasonable;
 - (B) The books, accounts, and records of every party shall be so maintained as to clearly and accurately disclose the precise nature and details of the transactions, including such accounting information as is necessary to support the reasonableness of the charges or fees to the respective parties;
 - (C) The insurer's surplus as regards policyholders following any dividends or distributions to shareholder affiliates shall be reasonable in relation to the

- insurer's outstanding liabilities and adequate to its financial needs;
- (D) The charges or fees for services performed shall be reasonable; and
 - (E) The expenses incurred and payment received shall be allocated to the insurer in conformity with customary insurance accounting practices consistently applied.
- (2) The following transactions involving a domestic insurer subject to this subchapter and any person in its holding company system may not be entered into unless the insurer has notified the commissioner in writing of its intention to enter into such a transaction at least thirty (30) days prior thereto, or such shorter period as the commissioner may permit, and the commissioner has not disapproved it within such a period:
- (A) Sales, purchases, exchanges, loans or extensions of credit, guarantees, or investments, provided such transactions are equal to or exceed as of December 31 next-preceding:
 - (i) With respect to nonlife insurers, the lesser of three percent (3%) of the insurer's admitted assets or twenty-five percent (25%) of surplus as regards policyholders; or
 - (ii) With respect to life insurers, three percent (3%) of the insurer's admitted assets;
 - (B) Loans or extensions of credit to any person who is not an affiliate, where the insurer makes the loans or extensions of credit with the agreement or understanding that the proceeds of the transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in, any affiliate of the insurer making the loans or extensions of credit provided the transactions are equal to or exceed as of December 31 next-preceding:
 - (i) With respect to nonlife insurers, the lesser of three percent (3%) of the insurer's admitted assets or twenty-five percent (25%) of surplus as regards policyholders; or
 - (ii) With respect to life insurers, three percent (3%) of the insurer's admitted assets;
 - (C) Reinsurance agreements or modifications thereto in which the reinsurance premium or a change in the insurer's liabilities equals or exceeds five percent (5%) of the insurer's surplus as regards policyholders, as of December 31 next-preceding, including those agreements which may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that any portion of the assets will be transferred to one (1) or more affiliates of the insurer;
 - (D) All management agreements, service contracts, and all cost sharing arrangements; and
 - (E) Any material transactions specified by regulation which the commissioner determines may adversely affect the interests of the insurer's policyholders.
- (3) A domestic insurer subject to this subchapter may not enter into transactions which are part of a plan or series of like transactions with persons within the

- holding company system if the purpose of those separate transactions is to avoid the threshold amount and thus avoid the review that would otherwise occur. If the commissioner determines that those separate transactions were entered into over any twelve-month period for such a purpose, the commissioner may exercise his or her authority under § 23-63-522.
- (4) The commissioner, in reviewing transactions pursuant to subdivision (a)(2) of this section, shall consider whether the transactions comply with the standards set forth in subdivision (a)(1) of this section and whether they may adversely affect the interests of policyholders.
 - (5) The commissioner shall be notified within thirty (30) days of any investment of a domestic insurer subject to this subchapter in any one (1) corporation if the total investment in such a corporation by the insurance holding company system exceeds ten percent (10%) of the corporation's voting securities.
- (b) For purposes of this subchapter, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, the following factors, among others, shall be considered:
- (1) The size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force, and other appropriate criteria;
 - (2) The extent to which the insurer's business is diversified among the several lines of insurance;
 - (3) The number and size of risks insured in each line of business;
 - (4) The extent of the geographical dispersion of the insurer's insured risks;
 - (5) The nature and extent of the insurer's reinsurance program;
 - (6) The quality, diversification, and liquidity of the insurer's investment portfolio;
 - (7) The recent, past, and projected future trend in the size of the insurer's surplus as regards policyholders;
 - (8) The surplus as regards policyholders maintained by other comparable insurers;
 - (9) The adequacy of the insurer's reserves; and
 - (10) The quality and liquidity of investments in subsidiaries made pursuant to § 23-63-505. The commissioner may treat any investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in his or her judgment the investment so warrants.
- (c) No insurer subject to registration under § 23-63-514 shall pay any extraordinary dividend or make any other extraordinary distribution to its stockholders until:
- (1) Thirty (30) days after the commissioner has received notice of the declaration thereof and within that period has not disapproved the payment; or
 - (2) The commissioner shall have approved the payment within the thirty-day period.
- (d) For purposes of this section, an extraordinary dividend or distribution means any dividend or distribution of cash or other property whose fair market value, together with that of the other dividends or distributions made within the preceding twelve (12) months, exceeds the larger of:
- (1) The lesser of:
 - (A) Ten percent (10%) of surplus; or

- (B) Either:
 - (i) The net gain from operations of life insurers or accident and health insurers, or both; or
 - (ii) The net income of property insurers or casualty insurers, or both, not including with either type of insurer its realized capital gains, and, further, in determining under this alternative whether a distribution or dividend is extraordinary, a property insurer or casualty insurer, or both, may carry forward income from the previous two (2) calendar years that has not already been paid out as dividends;
- (2) Ten percent (10%) of surplus, with dividends payable only from unassigned funds less twenty-five percent (25%) of unrealized capital gains; or
- (3) The lesser of:
 - (A) Ten percent (10%) of surplus; or
 - (B) Either:
 - (i) The net gain before capital gains for life insurers or accident and health insurers, or both, with it understood that such an insurer may carry forward net gain before capital gains from the previous two (2) calendar years that has not already been paid out as dividends; or
 - (ii) The net investment income for property insurers or casualty insurers, or both, with it understood that such an insurer may carry forward net investment income from the previous three (3) calendar years with dividends in each instance being payable only from unassigned funds less twenty-five percent (25%) of unrealized capital gains.
- (e) Notwithstanding any other provisions of law, an insurer may declare an extraordinary dividend or distribution which is conditional upon the commissioner's approval, and the declaration shall confer no rights upon stockholders until:
 - (1) The commissioner has approved the payment of the dividend or distribution; or
 - (2) The commissioner has not disapproved the payment within the thirty-day period referred to in subsection (c) of this section.
- (f) Notwithstanding any other provisions of law, an insurer may declare and pay, subject to the provisions of this section, an extraordinary dividend or distribution from its gross paid-in and contributed surplus, provided that:
 - (1) The dividend or distribution shall be made only upon a determination by the board of directors of the insurer that the assets of the insurer are in excess of the needs of its business; and
 - (2) Each dividend or distribution, when made, shall be identified as a distribution from gross paid-in and contributed surplus; and the amount per share shall be disclosed to the shareholders receiving the dividend or distribution concurrently with its distribution.

23-63-516. Examination.

- (a) **Power of Commissioner.** Subject to the limitation contained in this section and in addition to the powers which the Insurance Commissioner has under §§ 23-61-101 et seq., 23-61-201 et seq., and 23-61-301 et seq. relating to the examination of insurers,

the commissioner shall also have the power to order any insurer registered under § 23-63-514 to produce the records, books, or other information papers in the possession of the insurer or its affiliates as shall be necessary to ascertain the financial condition or legality of conduct of the insurer. In the event the insurer fails to comply with the order, the commissioner shall have the power to examine the affiliates to obtain the information.

- (b) **Use of Consultants.** The commissioner may retain at the insurer's expense such attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff as shall be reasonably necessary to assist in the conduct of the examination under subsection (a) of this section. Any person so retained shall be under the direction and control of the commissioner and shall act in an advisory capacity.
- (c) **Expenses.** Each registered insurer producing for examination records, books, and papers pursuant to subsection (a) of this section shall be liable for and shall pay the expense of the examination in accordance with §§ 23-61-101 et seq., 23-61-201 et seq., and 23-61-301 et seq.

23-63-517. Confidential treatment.

All information, documents, and copies thereof obtained by or disclosed to the Insurance Commissioner or any other person in the course of an examination or investigation made pursuant to § 23-63-516 and all information reported pursuant to § 23-63-514 shall be given confidential treatment and shall not be subject to subpoena and shall not be made public by the commissioner, the National Association of Insurance Commissioners, or any other person, except to insurance departments of other states. The information, documents, and copies thereof shall not be subject to subpoena or be made public without the prior written consent of the insurer to which it pertains unless the commissioner, after giving notice and opportunity to be heard to the insurer and its affiliates who would be affected thereby, determines that the interests of policyholders, shareholders, or the public will be served by the publication thereof. In that event, the commissioner or she may publish all or any part thereof in such a manner as he or she may deem appropriate.

23-63-518. Rules and regulations.

After compliance with §§ 23-61-108 and 23-61-304 of the Arkansas Insurance Code, the Insurance Commissioner may issue such rules, regulations, and orders as shall be necessary to carry out the provisions of this subchapter.

23-63-519. Judicial review - Mandamus.

- (a)(1) Any person aggrieved by any act, determination, rule, regulation, order, or any other action of the Insurance Commissioner pursuant to this subchapter may appeal therefrom to the Pulaski County Circuit Court.
- (2) The court shall conduct its review without a jury and by trial de novo, except that, if all parties including the commissioner so stipulate, the review shall be confined to the record.
- (3) Portions of the record may be introduced by stipulation into evidence in a trial de novo as to those parties so stipulating.

- (b) The filing of an appeal pursuant to this section shall stay the application of any rule, regulation, order, or other action of the commissioner to the appealing party unless the court, after giving the party notice and an opportunity to be heard, determines that such a stay would be detrimental to the interests of policyholders, shareholders, creditors, or the public.
- (c) Any person aggrieved by any failure of the commissioner to act or make a determination required by this subchapter may petition the Pulaski County Circuit Court for a writ in the nature of a mandamus directing the commissioner to act or make the determination forthwith.

23-63-520. Voting of securities.

- (a)(1) **When Prohibited.** No security which is the subject of any agreement or arrangement regarding acquisition, or which is acquired or to be acquired, in contravention of the provisions of this subchapter or of any rule, regulation, or order issued by the Insurance Commissioner pursuant to this subchapter may be voted at any shareholders' meeting, or may be counted for quorum purposes, and any action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though the securities were not issued and outstanding.
- (2) However, no action taken at any meeting shall be invalidated by the voting of the securities unless the action would materially affect control of the insurer or unless the courts of this state have so ordered.
- (3) If an insurer or the commissioner has reason to believe that any security of the insurer has been or is about to be acquired in contravention of the provisions of this subchapter or of any rule, regulation, or order issued by the commissioner pursuant to it, the insurer or the commissioner may apply to the Pulaski County Circuit Court to enjoin any offer, request, invitation, agreement, or acquisition made in contravention of §§ 23-63-506 - 23-63-513 or any rule, regulation, or order issued by the commissioner pursuant to it to enjoin the voting of any security so acquired, to void any vote of a security already cast at any meeting of shareholders, and for such other equitable relief as the nature of the case and the interests of the insurer's policyholders, creditors and shareholders, or the public may require.
- (b) **Sequestration of Voting Securities.** In any case where a person has acquired or is proposing to acquire any voting securities in violation of this subchapter or any rule, regulation, or order issued by the commissioner pursuant to it, the Pulaski County Circuit Court may, on such notice as the court deems appropriate and upon the application of the insurer or the commissioner, seize or sequester any voting securities of the insurer owned directly or indirectly by the person and issue such orders with respect thereto as may be appropriate to effectuate the provisions of this subchapter. Notwithstanding any other provisions of law, for the purposes of this subchapter, the situs of the ownership of the securities of domestic insurers shall be deemed to be in this state.

23-63-521. Injunctions.

Whenever it appears to the Insurance Commissioner that any insurer or any director,

officer, employee, or agent of an insurer has committed or is about to commit a violation of this subchapter or of any rule, regulation, or order issued by the commissioner pursuant to it, the commissioner may apply to the Pulaski County Circuit Court for an order enjoining the insurer or the director, officer, employee, or agent of the insurer from violating or continuing to violate this subchapter or any rule, regulation, or order, and for such other relief as the nature of the case and the interests of the insurer's policyholders, creditors, and shareholders or the public may require.

23-63-522. Criminal and civil proceedings.

- (a) Whenever it appears to the Insurance Commissioner that any insurer or any director, officer, employee, or agent of the insurer has committed a willful violation of this subchapter, the commissioner may cause criminal proceedings to be instituted in the circuit court for the county in which the principal office of the insurer is located or, if the insurer has no office in the state, then by the Circuit Court of Pulaski County, against the insurer or the responsible director, officer, employee, or agent of the insurer.
- (b)(1) Any insurer which willfully violates this subchapter shall be fined not more than ten thousand dollars (\$10,000).
- (2) Any individual who willfully violates this subchapter shall be fined not more than three thousand dollars (\$3,000) or, if the willful violation involves the deliberate perpetration of a fraud upon the commissioner, imprisoned not more than two (2) years, or both.
- (c) Any officer, director, or employee of an insurance holding company system who willfully and knowingly subscribes to or makes or causes to be made any false statements or false reports or false filings with the intent to deceive the commissioner in the performance of his or her duties under this subchapter, upon conviction thereof, shall be fined not more than three thousand dollars (\$3,000), or imprisoned for not more than two (2) years, or both. Any fines imposed shall be paid by the officer, director, or employee in his or her individual capacity.
- (d) Any insurer failing, without just cause, to file any registration statement as required in this subchapter shall be required, after notice and hearing, to pay a penalty of two hundred dollars (\$200) for each day's delay, to be recovered by the commissioner, if necessary, by a civil suit therefor brought by the commissioner in the Circuit Court of Pulaski County. The commissioner may reduce the penalty hereunder if the insurer demonstrates to the commissioner that the imposition of the penalty would constitute a financial hardship to the insurer.
- (e) Every director or officer of an insurance holding company system who knowingly violates, participates in, or assents to, or who knowingly shall permit any of the officers or agents of the insurer to engage in transactions or make investments which have not been properly reported or submitted pursuant to §§ 23-63-506 - 23-63-513, or which violate this subchapter, shall pay, in their individual capacity, a civil penalty of not more than five thousand dollars (\$5,000) per violation, after notice and hearing before the commissioner. In determining the amount of the civil penalty, the commissioner shall take into account the appropriateness of the forfeiture with respect to the gravity of the violation, the history of previous violations, and such other matters as justice may require.

- (f) Whenever it appears to the commissioner that any insurer subject to this subchapter or any director, officer, employee, or agent thereof has engaged in any transaction or entered into a contract which is subject to § 23-63-515 and which would not have been approved had such approval been requested, the commissioner may order the insurer to cease and desist immediately any further activity under that transaction or contract. After notice and hearing, the commissioner may also order the insurer to void any such contracts and restore the status quo if such an action is in the best interest of the policyholders, creditors, or the public.

23-63-523. Receivership.

- (a) Whenever it appears to the Insurance Commissioner that any person has committed a violation of this subchapter which so impairs the financial condition of a domestic insurer as to threaten insolvency or make the further transaction of business by it hazardous to its policyholders, creditors, shareholders, or the public, then the commissioner may proceed as provided in § 23-68-101 et seq. to take possession of the property of the domestic insurer and to conduct the business thereof.
- (b) If an order for liquidation or rehabilitation of the domestic insurer is entered, the receiver appointed under such an order shall have the right to recover on behalf of the insurer the distributions and payments made during the one (1) year preceding the petition for liquidation, conservation, or rehabilitation:
 - (1) The amount of distributions, other than distributions of shares of the same class of stock, paid by the insurer on its capital stock to any parent corporation or holding company or person or affiliate who otherwise controlled the insurer; or
 - (2) Any payment in the form of a bonus, termination settlement, or extraordinary lump sum salary adjustment made by the insurer or its subsidiaries to a director, officer, or employee.
- (c) No such distribution shall be recoverable if the parent or affiliate shows that, when paid, such a distribution was lawful and reasonable, and that the insurer did not know and could not reasonably have known that such a distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.
- (d) Any person who was a parent corporation or holding company or a person who otherwise controlled the insurer or affiliate at the time such distributions were paid shall be liable up to the amount of the distributions or payments under subsection (b) the person received. Any person who otherwise controlled the insurer at the time the distributions were declared shall be liable up to the amount of distributions he or she would have received if they had been paid immediately. If two (2) or more persons are liable with respect to the same distributions, they shall be jointly and severally liable.
- (e) The maximum amount recoverable under this section shall be the amount needed in excess of all other available assets of the impaired or insolvent insurer to pay the contractual obligations of the impaired or insolvent insurer and to reimburse any guaranty funds.
- (f) To the extent that any person liable under subsection (d) of this section is insolvent or otherwise fails to pay claims due from it pursuant to that subsection, its parent corporation or holding company, or person who otherwise controlled it at the time the

distribution was paid, shall be jointly and severally liable for any resulting deficiency in the amount recovered from such a parent corporation or holding company or person who otherwise controlled it.

23-63-524. Revocation, suspension, or nonrenewal of insurer's license.

- (a) Whenever it appears to the Insurance Commissioner that any person has committed a violation of this subchapter which makes the continued operation of an insurer contrary to the interests of policyholders or the public, the commissioner may, after giving notice and an opportunity to be heard, determine to suspend, revoke, or refuse to renew the insurer's license or authority to do business in this state for such period as the commissioner finds is required for the protection of policyholders or the public.
- (b) Any determination shall be accompanied by specific findings of fact and conclusions of law.

23-63-525. Acquisitions involving insurers not otherwise covered - Definitions.

The following definitions shall apply for the purposes of §§ 23-63-525 - 23-63-530 only:

- (1) "Acquisition" means any agreement, arrangement, or activity the consummation of which results in a person acquiring directly or indirectly the control of another person, and includes, but is not limited to, the acquisition of voting securities, the acquisition of assets, bulk reinsurance, and mergers; and
- (2) An "involved insurer" includes an insurer which either acquires or is acquired, is affiliated with an acquirer or acquired, or is the result of a merger.

23-63-526. Acquisitions involving insurers not otherwise covered - Scope.

- (a) Except as exempted in subsection (b) of this section, §§ 23-63-525 - 23-63-528 apply to any acquisition in which there is a change in control of an insurer authorized to do business in this state.
- (b) Sections 23-63-525 - 23-63-528 shall not apply to the following:
 - (1) An acquisition subject to approval or disapproval by the Insurance Commissioner pursuant to §§ 23-63-506 - 23-63-513;
 - (2) A purchase of securities solely for investment purposes, so long as the securities are not used by voting or otherwise to cause or attempt to cause the substantial lessening of competition in any insurance market in this state. If a purchase of securities results in a presumption of control under § 23-63-503(2), it is not solely for investment purposes unless the commissioner of the insurer's state of domicile accepts a disclaimer of control or affirmatively finds that control does not exist and such a disclaimer action or affirmative finding is communicated by the domiciliary commissioner to the commissioner of this state;
 - (3) The acquisition of a person by another person when both persons are neither directly nor through affiliates primarily engaged in the business of insurance, if preacquisition notification is filed with the commissioner in accordance with § 23-63-527(b) thirty (30) days prior to the proposed effective date of the acquisition. However, such a preacquisition notification is not required for exclusion if the acquisition would otherwise be excluded from §§ 23-63-525 - 23-63-530 by any other subdivision of this subsection;

- (4) The acquisition of already affiliated persons;
- (5)(A) An acquisition if, as an immediate result of the acquisition:
 - (i) In no market would the combined market share of the involved insurers exceed five percent (5%) of the total market;
 - (ii) There would be no increase in any market share; or
 - (iii) In no market would the combined market share of the involved insurers exceed twelve percent (12%) of the total market, and the market share increases by more than two percent (2%) of the total market.
- (B) For purposes of this subdivision (b)(5), a "market share" means a direct written insurance premium in this state for a line of business as contained in the annual statement required to be filed by insurers licensed to do business in this state;
- (6) An acquisition for which a preacquisition notification would be required pursuant to § 23-63-527, due solely to the resulting effect on the ocean marine insurance line of business; or
- (7) An acquisition of an insurer whose domiciliary commissioner affirmatively finds that such a insurer is in failing condition, and there is a lack of a feasible alternative to improving such a condition, and the public benefits of improving such an insurer's condition through acquisition exceed the public benefits that would arise from not lessening competition. The findings must be communicated by the domiciliary commissioner to the commissioner of this state.

23-63-527. Acquisitions involving insurers not otherwise covered - Preacquisition notification, waiting period.

- (a) An acquisition covered by § 23-63-526 may be subject to an order pursuant to § 23-63-529 unless the acquiring person files a preacquisition notification and the waiting period has expired. The acquired person may file a preacquisition notification. The Insurance Commissioner shall give confidential treatment to information submitted under this section in the same manner as provided in § 23-63-517.
- (b) The preacquisition notification shall be in such form and contain such information as prescribed by the National Association of Insurance Commissioners relating to those markets which, under § 23-63-526(b)(5), cause the acquisition not to be exempted from the provisions of §§ 23-63-525 - 23-63-528. The commissioner may require such additional material and information as he or she deems necessary to determine whether the proposed acquisition, if consummated, would violate the competitive standards of § 23-63-528. The required information may include an opinion of an economist as to the competitive impact of the acquisition in this state accompanied by a summary of the education and experience of such a person indicating his or her ability to render an informed opinion.
- (c) The waiting period required shall begin on the date of receipt by the commissioner of a preacquisition notification and shall end on the earlier of the thirtieth day after the date of the receipt or termination of the waiting period by the commissioner. Prior to the end of the waiting period, the commissioner on a one-time basis may require the submission of additional needed information relevant to the proposed acquisition, in which event the waiting period shall end on the earlier of the thirtieth day after receipt

of the additional information by the commissioner or termination of the waiting period by the commissioner.

23-63-528. Acquisitions involving insurers not otherwise covered - Competitive standard.

(a) The Insurance Commissioner may enter an order under § 23-63-529(a) with respect to an acquisition if there is substantial evidence that the effect of the acquisition may be substantially to lessen competition in any line of insurance in this state or tend to create a monopoly therein or if the insurer fails to file adequate information in compliance with § 23-63-527.

(b) In determining whether a proposed acquisition would violate the competitive standards of subsection (a) of this section, the commissioner shall consider the following:

(1) Any acquisition covered under § 23-63-526 involving two (2) or more insurers competing in the same market is prima facie evidence of violation of the competitive standards:

(A)(i) If the market is highly concentrated and the involved insurers possess the following shares of the market:

Insurer A	Insurer B
Four percent (4%)	Four percent (4%) or more
Ten percent (10%)	Two percent (2%) or more
Fifteen percent (15%)	One percent (1%) or more

or;

(ii) If the market is not highly concentrated and the involved insurers possess the following shares of the market:

Insurer A	Insurer B
Five percent (5%)	Five percent (5%) or more
Ten percent (10%)	Four percent (4%) or more
Fifteen percent (15%)	Three percent (3%) or more
Nineteen percent (19%)	One percent (1%) or more

(B) A highly concentrated market is one in which the share of the four (4) largest insurers is seventy-five percent (75%) or more of the market. Percentages not shown in the tables are interpolated proportionately to the percentages that are shown. If more than two (2) insurers are involved, exceeding the totals of the two (2) columns in the table is prima facie evidence of violation of the competitive standard in subsection (a) of this section. For the purpose of this

subdivision, the insurer with the largest share of the market shall be deemed to be Insurer A;

- (2) There is a significant trend toward increased concentration when the aggregate market share of any grouping of the largest insurers in the market from the two (2) largest to the eight (8) largest has increased by seven percent (7%) or more of the market over a period of time extending from any base year five (5) to ten (10) years prior to the acquisition up to the time of the acquisition. Any acquisition or merger covered under § 23-63-526 involving two (2) or more insurers competing in the same market is prima facie evidence of violation of the competitive standard in subsection (a) of this section if:
 - (A) There is a significant trend toward increased concentration in the market;
 - (B) One (1) of the insurers involved is one (1) of the insurers in a grouping of such large insurers showing the requisite increase in the market share; and
 - (C) Another involved insurer's market is two percent (2%) or more;
 - (3) For purposes of this subsection:
 - (A) The term "insurer" includes any company or group of companies under common management ownership or control;
 - (B) The term "market" means the relevant product and geographical markets. In determining the relevant product and geographical markets, the commissioner shall give due consideration to, among other things, the definitions or guidelines, if any, promulgated by the National Association of Insurance Commissioners and to information, if any, submitted by the parties to the acquisition. In the absence of sufficient information to the contrary, the relevant product market is assumed to be the direct written insurance premium for a line of business with such a line being that used in the annual statement required to be filed by insurers doing business in this state and the relevant geographical market is assumed to be this state; and
 - (C) The burden of showing prima facie evidence of violation of the competitive standard rests upon the commissioner; and
 - (4)(A) Even though an acquisition is not prima facie violative of the competitive standard under subdivisions (b)(1) and (2) of this section, the commissioner may establish the requisite anticompetitive effect based upon other substantial evidence.
 - (B) Even though an acquisition is prima facie violative of the competitive standard under subdivisions (b)(1) and (2) of this section, a party may establish the absence of the requisite anticompetitive effect based upon other substantial evidence.
 - (C) Relevant factors in making a determination under this subdivision (b)(4) include, but are not limited to, the following: market shares, volatility of ranking of market leaders, number of competitors, concentration, trend of concentration in the industry, and ease of entry and exit into the market.
- (c) An order may not be entered under § 23-63-529(a) if:
- (1) The acquisition will yield substantial economies of scale or economies in resource utilization that cannot be feasibly achieved in any other way, and the public benefits which would arise from such economies exceed the public benefits

- which would arise from not lessening competition; or
- (2) The acquisition will substantially increase the availability of insurance, and the public benefits of such an increase exceed the public benefits which would arise from not lessening competition.

23-63-529. Acquisitions involving insurers not otherwise covered - Orders and penalties.

- (a)(1) If an acquisition violates the standards of §§ 23-63-525 - 23-63-528, the Insurance Commissioner may enter an order:
 - (A) Requiring an involved insurer to cease and desist from doing business in this state with respect to the line or lines of insurance involved in the violation; or
 - (B) Denying the application of an acquired or acquiring insurer for a license to do business in this state.
 - (2) Such an order shall not be entered unless there is a hearing, and notice of the hearing is issued prior to the end of the waiting period and not less than ten (10) days prior to the hearing, and the hearing is concluded and the order is issued no later than sixty (60) days after the end of the waiting period. Every order shall be accompanied by a written decision of the commissioner setting forth his or her findings of fact and conclusions of law.
 - (3) An order entered under this subsection shall not become final earlier than thirty (30) days after it is issued during which time the involved insurer may submit a plan to remedy the anticompetitive impact of the acquisition within a reasonable time. Based upon such a plan or other information, the commissioner shall specify the conditions, if any, under the time period during which the aspects of the acquisition causing a violation of the standards of §§ 23-63-525 - 23-63-528 would be remedied and the order vacated and modified.
 - (4) An order pursuant to this subsection shall not apply if the acquisition is not consummated.
- (b) Any person who violates a cease and desist order of the commissioner under subsection (a) of this section and while such an order is in effect may after notice and hearing and upon order of the commissioner be subject at the discretion of the commissioner to any one (1) or more of the following:
 - (1) A monetary penalty of not more than ten thousand dollars (\$10,000) for every day of violation; and
 - (2) Suspension or revocation of the person's license.
 - (c) Any insurer or other person who fails to make any filing required by §§ 23-63-525 - 23-63-528 and who fails to demonstrate a good faith effort to comply with any such filing requirement shall be subject to a fine of not more than fifty thousand dollars (\$50,000).

23-63-530. Acquisitions involving insurers not otherwise covered - Inapplicable provisions.

Sections 23-63-520 and 23-63-523 do not apply to acquisitions covered under § 23-63-526.

Subchapter 6. Financial Reporting Standards.

23-63-601. Definition.

In any determination of the financial condition, including whether an asset is allowable, of a domestic insurer, domestic title insurer, or other domestic regulated entities reporting to the Insurance Commissioner, including health maintenance organizations, hospital or medical service corporations, farmers' mutual aid associations or companies, and other licensees, all hereinafter called "reporting entities" for purposes of this subchapter, the definition of an "asset" contained in the National Association of Insurance Commissioners' publication as it existed on January 1, 2001, entitled the "Accounting Practices and Procedures Manual", with certain additions, will be used in the determination. Additions shall include, but may not be limited to, the following:

- (1)(A) Electronic data processing equipment, licenses, and operating system software, excluding any amount paid to officers and employees of the reporting entity, necessary for installation and use of a data processing or accounting system, or both, to be used in connection with the business of the insurer or reporting entity.
- (B) Commencing on and after January 1, 2001, assets allowed under this section, as well as nonoperating system software, shall be accounted for in accordance with the National Association of Insurance Commissioners' publication as it existed on January 1, 2001, entitled the "Accounting Practices and Procedures Manual"; and
- (2) Other assets as specified by the commissioner in a rule or regulation.

23-63-602. Assets as deductions from liabilities.

Assets may be allowed as deductions from corresponding liabilities, and liabilities may be charged as deductions from assets. Deductions from assets may be charged as liabilities in accordance with the National Association of Insurance Commissioners' publication as it existed on January 1, 2001, entitled the "Accounting Practices and Procedures Manual".

23-63-603. Assets not allowed.

Assets not allowed shall be those so referenced or described as nonadmitted in the National Association of Insurance Commissioners' publication as it existed on January 1, 2001, entitled the "Accounting Practices and Procedures Manual", unless otherwise specified in this subchapter.

23-63-604. Liabilities - In general.

In any determination of the financial condition of a reporting entity, liabilities shall include definitions and amounts specified in the National Association of Insurance Commissioners' publication as it existed on January 1, 2001, entitled the "Accounting Practices and Procedures Manual".

§ 23-63-605 - 23-63-609. [Repealed.]

23-63-610. Assets - Conflict of treatment in subchapters in Arkansas Insurance Code.

In the event of a conflict as to treatment of assets between §§ 23-63-601 et seq. and 23-63-801 et seq., § 23-63-601 et seq. shall govern.

23-63-611. Asset valuation.

Assets of reporting entities shall be valued in accordance with the following:

- (1) Bonds and securities shall be valued in accordance with the methods specified in the National Association of Insurance Commissioners' publication as it existed on January 1, 2001, entitled the "Valuation of Securities Manual", prepared by the Securities Valuation Office;
- (2) Shares of stock shall be valued in accordance with the methods specified in the National Association of Insurance Commissioners' publication as it existed on January 1, 2001, entitled the "Accounting Practices and Procedures Manual"; and
- (3) Other assets shall be valued as specified by the Insurance Commissioner in a rule and regulation, in accordance with the provisions of § 23-63-601(2), which method of valuation is not inconsistent with the National Association of Insurance Commissioners' publication as it existed on January 1, 2001, entitled the "Valuation of Securities Manual", prepared by the Securities Valuation Office.

23-63-612. Purpose - Compliance date.

- (a) It is the intention of this act to allow the Insurance Commissioner to adopt rules to modernize and harmonize the financial accounting laws of this state governing assets and liabilities of domestic reporting entities as defined. This act requires domestic health maintenance organizations, domestic title insurers, and other types of domestic licensees to modernize financial accounting methods in order to comply with laws and rules of the state applicable to domestic insurance companies and reporting entities. The provisions of this act are designed to allow domestic licensees to compete in the financial and insurance markets with changing federal and state laws, particularly those dealing with the treatment of assets, liabilities, and financial accounting.
- (b) The provisions of this act are intended to and shall govern the financial reports for the year 2001 of domestic reporting entities and shall govern the annual report for the year 2001 of domestic reporting entities due at the State Insurance Department on and after March 1, 2002, and supported by quarterly reports of 2001 for the first three (3) quarters. The provisions of this act shall govern as to all quarterly and annual financial reports due in subsequent reporting periods.
- (c) This act shall govern:
 - (1) Domestic stock and mutual insurers;
 - (2) Domestic reciprocal and stipulated premium plan insurers;
 - (3) Domestic mutual assessment life and disability insurers;
 - (4) Domestic farmers' mutual aid associations or companies;
 - (5) Domestic title insurers;
 - (6) Domestic health maintenance organizations;

- (7) Domestic hospital or medical service organizations;
 - (8) Domestic licensed casualty insurers transacting business as a risk retention group;
or
 - (9) Other domestic reporting entities as used in this act.
- (d) Provided, however, if the immediate application of this act would have the effect of reducing any domestic reporting entity's statutory surplus, whether due to the nonadmission or reduction in admissible value of any then existing asset or an increase in its then existing liabilities or other changes, the domestic reporting entity may continue to reflect such assets and liabilities on its statutory financial statements as they could have been reflected but for the enactment of this act until the annual statement filing for the year ending December 31, 2004.

23-63-613. Use of new and revised manuals - Rule-making authority.

- (a)(1) The Insurance Commissioner is authorized to employ the standards and requirements set forth in publications recited in this subchapter and adopted and published by the National Association of Insurance Commissioners, including, but not limited to, those listed in this subchapter.
 - (2) The publications identified in subdivision (a)(1) of this section are hereby adopted in their present form as of August 13, 2001.
 - (3) The commissioner is authorized and empowered to promulgate regulations for the purposes of adopting all or part of other financial standards publications of the National Association of Insurance Commissioners or publications by other authors if the commissioner determines that such an action is in the best interest of the public.
 - (4) Upon mailing of written notice by the commissioner to all domestic reporting entities of the promulgation and publication by the National Association of Insurance Commissioners or other authors of amendments, revisions, or modifications to any publication previously adopted by the commissioner in this subchapter, such published amendments, revisions, or modifications shall become effective on the date designated by the commissioner in the written notice, which date shall not be earlier than eight (8) months after the date of mailing of the notice.
- (b) The commissioner is authorized and empowered to adopt financial standards regulations for the purpose of modifying, amending, or revising any publication promulgated by the National Association of Insurance Commissioners or other authors, or any published amendments, modifications, or revisions to any such publications if the commissioner determines that such an action is in the best interest of the public. In this event, the effective date of any modification, amendment, or revision shall be the effective date of the regulation.

**Subchapter 7.
Limits of Risk.**

23-63-701. Limit of risk.

- (a) No insurer shall retain any risk on any one (1) subject of insurance, whether located or to be performed in this state or elsewhere, in an amount exceeding ten percent (10%) of its surplus to policyholders. Provided, with the prior approval of the Insurance Commissioner, such a limitation shall not apply to a subject of insurance controlled by the insurer or owned by an affiliate of the insurer.
- (b) A "subject of insurance" for the purposes of this section as to insurance against fire and hazards other than windstorm, earthquake, or other catastrophic hazards includes all properties insured by the same insurer which are customarily considered by underwriters to be subject to loss or damage from the same fire or the same occurrence of the other hazard insured against.
- (c) Reinsurance ceded as authorized by §§ 23-62-202, 23-62-204, and 23-62-205 shall be deducted in determining risk retained. As to surety risks, deduction shall also be made of the amount assumed by any established incorporated cosurety and the value of any security deposited, pledged, or held subject to the surety's consent and for the surety's protection.
- (d) As to alien insurers, this section shall relate only to risks and surplus to policyholders of the insurer's United States branch.
- (e) "Surplus to policyholders", for the purpose of this section, in addition to the insurer's capital and surplus, shall be deemed to include any voluntary reserves which are not required pursuant to law and shall be determined from the last sworn statement of the insurer on file with the commissioner, or by the last report of examination of the insurer, whichever is the more recent at the time of assumption of risk.
- (f) This section shall not apply to life insurance, disability insurance, title insurance, annuities, insurance of wet marine and foreign trade insurance risks, workers' compensation insurance, employers' liability coverages, nor to any policy or type of coverage as to which the maximum possible loss to the insurer is not readily ascertainable on issuance of the policy.
- (g) Limit of risk as to newly organized domestic mutual insurers shall be as provided in § 23-69-112.

Subchapter 8. Investments.

23-63-801. Applicability.

Except as to § 23-63-835, the provisions of this subchapter shall apply to domestic insurers only.

23-63-802. Eligible investments.

- (a) Insurers shall invest in, or lend their funds on the security of, and shall hold as invested assets only eligible investments as prescribed in this subchapter.
- (b) Any particular investment held by an insurer on January 1, 1960, and which was a legal investment at the time it was made, or which the insurer was legally entitled to possess immediately prior to January 1, 1960, shall be deemed to be an eligible investment.

- (c) Eligibility of an investment shall be determined as of the date of its making or acquisition, except as stated in subsection (b) of this section.
- (d) Any investment limitation based upon the amount of the insurer's assets or particular funds shall relate to such assets or funds as shown by the insurer's annual statement as of the December 31 next preceding the date of acquisition of the investment by the insurer, or as shown by a current financial statement filed with the commissioner.
- (e) None of the requirements, restrictions, limitations, or prohibitions for investments made under this subchapter, or contained in any regulation promulgated pursuant thereto, shall be preempted by the provisions of section 106 of Title 1 of the Secondary Mortgage Market Enhancement Act of 1984. The provisions of this subchapter and any regulations promulgated pursuant thereto that pertain to investments in the categories of securities specified in paragraphs (1) and (2) of subsection (a) of the Secondary Mortgage Market Enhancement Act shall remain in full force and effect notwithstanding the enactment of the Secondary Mortgage Market Enhancement Act.

23-63-803. General qualifications.

- (a) Without prior written approval of the Insurance Commissioner, no security or investment, other than real and personal property acquired under § 23-63-828, concerning real estate, shall be eligible for acquisition unless it is interest-bearing, with the accrued interest being paid annually or more frequently than annually, or dividend or income-paying, or is held for income purposes, is not then in default in any respect, and the insurer is entitled to receive for its exclusive account and benefit the interest or income accruing thereon.
- (b) No provision of this subchapter shall prohibit the acquisition by an insurer of other or additional securities or property if received as a dividend or as a lawful distribution of assets, or under a lawful and bona fide agreement of bulk reinsurance, merger, or consolidation. Any investment so acquired which is not otherwise eligible under this subchapter shall be disposed of pursuant to § 23-63-830 if personal property or securities, or pursuant to § 23-63-829 if real property.

23-63-804. Authorization of investment.

- (a) An insurer shall not make any investment or loan, other than policy loans or annuity contract loans of a life insurer, unless the insurer is authorized or approved by the insurer's board of directors or by a committee authorized by the board and charged with the supervision or making of the investment or loan.
- (b) The minutes of the committee shall be recorded and regular reports of the committee shall be submitted to the board of directors.

23-63-805. Diversification of investments.

An insurer shall invest in or hold as admitted assets categories of investments only within applicable limits as follows:

(1) One person.

- (A) Except with the consent of the Insurance Commissioner and except as

otherwise specified in this subchapter, an insurer shall not have, directly or indirectly through an investment subsidiary, an investment under this subchapter if, as a result of and after giving effect to the investment, the insurer would hold more than five percent (5%) of its admitted assets in investments of all kinds issued, assumed, accepted, insured, or guaranteed by a single person, or five percent (5%) of its admitted assets in investments in the voting securities of a depository institution or any company that controls the institution. The five percent (5%) limitation shall not apply to the aggregate amounts insured by a single financial guaranty insurer with the highest generic rating issued by a nationally recognized statistical rating organization. Investments in certificates of deposit and savings and loan association deposits in any one (1) person may be the greater of ten percent (10%) of the insurer's assets or the maximum amount of federal insurance applicable to the deposit. This restriction shall not apply as to general obligations of the United States or of any state, or include policy loans made under § 23-63-821. Provided further, the applicable limitation shall be twenty percent (20%) rather than five percent (5%) as to direct obligations of certain federal agencies identified in § 23-63-812 of the Arkansas Insurance Code.

- (B) If upon enactment, the immediate application of this provision would have the effect of reducing the admitted asset value of assets held by a particular insurer, the insurer may continue to reflect as admitted those assets that would be admissible but for the enactment of this provision, until the annual statement filing for the year ended December 31, 2004;
- (2) **Minimum Capital.** An insurer, other than a title insurer, shall invest and maintain invested funds not less in amount than the minimum paid-in capital stock required under the Arkansas Insurance Code of a domestic stock insurer transacting like kinds of insurance only in cash and the securities provided for under §§ 23-63-806, 23-63-808, and 23-63-826;
- (3) **Life Insurance Reserves.** A life insurer shall also invest and keep invested its funds in amount not less than seventy-five percent (75%) of the reserves under its life insurance policies and annuity contracts, other than variable annuities, in force, in cash, securities, or investments allowed under this subchapter, other than stocks of subsidiaries of the insurer;
- (4) **Common Stocks.** An insurer, other than a life insurer, may invest and have invested at any one (1) time an aggregate amount not more than twenty-five percent (25%) of its assets in all stocks under § 23-63-816 concerning common stocks, § 23-63-817 concerning insurance stocks, and § 23-63-820 concerning investment trust securities. A life insurer may so invest and have invested in the stocks no more than ten percent (10%) of its assets. This provision shall not apply as to stock of a controlled or subsidiary insurance corporation or other corporation under § 23-63-817 or § 23-63-818, or as to variable annuities;
- (5) **Miscellaneous.** Except with the commissioner's consent, an insurer shall not have invested at any one (1) time more than twenty percent (20%) of its assets in the class of securities described in §§ 23-63-815 and 23-63-819;
- (6) **Other Specific Limits.** Limits as to investments in the category of real estate shall be as provided in § 23-63-828. Other specific limits shall apply as stated in

the sections dealing with other respective kinds of investments; and

(7) **Limitations on Aquisitions and Investments.** Notwithstanding any other provision of this subchapter to the contrary:

(A)(i) No insurer shall acquire, directly or indirectly, any medium grade or lower grade obligation of any institution if, after giving effect to any such acquisition, the aggregate amount of all medium grade and lower grade obligations then held by the domestic insurer would exceed twenty percent (20%) of its admitted assets, provided that no more than ten percent (10%) of its admitted assets consist of obligations rated four (4), five (5), or six (6) by the Securities Valuation Office of the National Association of Insurance Commissioners, and no more than three percent (3%) of its admitted assets consist of obligations rated five (5) or six (6) by the Securities Valuation Office, and no more than one percent (1%) of its admitted assets consist of obligations rated six (6) by the Securities Valuation Office. Attaining or exceeding the limit of any one (1) category shall not preclude an insurer from acquiring obligations in other categories subject to the specific and multicategory limits.

(ii) No insurer may invest more than an aggregate of one percent (1%) of its admitted assets in medium grade obligations issued, guaranteed, or insured by any one (1) institution, nor may it invest more than one-half of one percent (0.5%) of its admitted assets in lower grade obligations issued, guaranteed, or insured by any one (1) institution. In no event, however, may an insurer invest more than one percent (1%) of its admitted assets in any medium grade or lower grade obligations issued, guaranteed, or insured by any one (1) institution.

(iii) An insurer may acquire an obligation of an institution in which the insurer already has one (1) or more obligations, if the obligation is acquired in order to protect an investment previously made in the obligations of the institution. Provided, that all such acquired obligations shall not exceed one-half of one percent (0.5%) of the insurer's admitted assets.

(iv) Nothing contained in this subdivision (7):

(a) Shall prohibit an insurer from acquiring any obligations which it has committed to acquire if the insurer would have been permitted to acquire that obligation pursuant to this subchapter on the date on which the insurer committed to purchase that obligation;

(b) Shall prohibit an insurer from acquiring an obligation as a result of restructuring of a medium or lower grade obligation already held; or

(c) Shall require an insurer to sell or otherwise dispose of any obligation legally acquired prior to March 16, 1993.

(v)(a) The board of directors of any insurer which acquires or invests, directly or indirectly, more than two percent (2%) of its admitted assets in medium grade and lower grade obligations of any institution shall adopt a written plan for the making of such investments.

(b) The plan, in addition to the guidelines with respect to the quality of the issues invested in, shall contain diversification standards, including,

but not limited to, standards for issuer, industry, duration, liquidity, and geographic location; and

(B) For purposes of this subdivision (7):

- (i) "Admitted assets" means the amount thereof as of the last day of the most recently concluded annual statement year, computed in the same manner as admitted assets pursuant to § 23-63-601 et seq.;
- (ii) "Aggregate amount" of medium grade and lower grade obligations means the aggregate statutory statement value thereof;
- (iii) "Institution" means a corporation, a joint-stock company, an association, a trust, a business partnership, a business joint venture, or similar entity;
- (iv) "Lower grade obligations" means obligations which are rated four (4), five (5), or six (6) by the Securities Valuation Office of the National Association of Insurance Commissioners; and
- (v) "Medium grade obligations" means obligations which are rated three (3) by the Securities Valuation Office of the National Association of Insurance Commissioners.

23-63-806. United States Government obligations.

An insurer may invest in bonds, notes, warrants, and other evidences of indebtedness which are direct obligations of the United States or for which the full faith and credit of the United States is pledged for the payment of principal and interest.

23-63-807. Loans guaranteed by the United States.

An insurer may invest in loans guaranteed as to principal and interest by the United States, or by any agency or instrumentality of the United States, to the extent of the guaranty.

23-63-808. Investments in public obligations.

- (a) An insurer may invest in bonds or other evidences of indebtedness which are general obligations of, or are secured by pledge of specific revenue by, this state or any other state of the United States, or any of the counties or incorporated cities or towns, or duly organized school districts or other taxing districts of such states.
- (b) No security shall be eligible for investment if within five (5) years next preceding the date of the proposed investment, the obligor has defaulted in the payment of principal or interest on any of its tax-supported obligations.

23-63-809. Municipal or county utilities.

An insurer may invest in bonds, notes, or evidences of indebtedness of any municipal or county utility within the United States or Canada, which are payable from revenues or earnings specifically pledged for the payment of the principal and interest on the obligations, and for the payment of which a lawful sinking fund or reserve fund has been established and is being maintained, but only if no default in payment of principal or interest on the obligations to be purchased has occurred within five (5) years of the investment.

23-63-810. Improvement district obligations.

- (a) An insurer may invest in bonds, notes, or evidences of indebtedness issued by any local improvement district in this or any other state to finance local improvements authorized by law if the principal and interest of the obligations is payable from assessments on real property within the local improvement district.
- (b) No investment shall be made if the face value of all obligations, together with all similar obligations of the improvement district outstanding, exceeds fifty percent (50%) of the market value of the real property and improvements upon which the bonds or the assessments for the payment of principal and interest thereon are liens inferior only to the liens for general ad valorem property taxes.
- (c) No investment shall be made unless no default in payment of principal or interest on the obligations to be purchased has occurred within five (5) years of the date of investment therein, or, if the obligations were issued less than five (5) years prior to the date of investment, no default in payment of principal or interest has occurred on any of the obligations of the issuer within five (5) years of the investment.

23-63-811. Local industrial development bonds.

An insurer may invest in the negotiable first-lien bonds issued by local industrial development corporations organized under the Arkansas Industrial Development Act, § 15-4-101 et seq.

23-63-812. Obligations or stock of certain federal agencies.

An insurer may invest in the obligations, or stock where stated, of the following agencies of the United States Government, whether or not the obligations are guaranteed by the government:

- (1) Commodity credit corporation;
- (2) Notes, bonds, debentures, or other similar obligations issued by the Federal Land Banks, Federal Intermediate Credit Banks, or Banks for Cooperatives, or any other obligations issued pursuant to the provisions of an act of Congress of the United States known as the Farm Credit Act of 1971 and acts amendatory thereto;
- (3) Federal home loan banks, and stock thereof;
- (4) Federal National Mortgage Association, and stock thereof, when acquired in connection with the sale of mortgage loans to the association; and
- (5) Any other similar agency of the United States Government and of similar financial quality.

23-63-813. International banks.

Any insurer may invest in obligations issued, assumed, or guaranteed by the International Bank for Reconstruction and Development, the Inter-American Development Bank, or the African Development Bank.

23-63-814. Corporate bonds and debentures.

- (a) An insurer may invest in bonds, debentures, notes, and other evidences of indebtedness issued, assumed, or guaranteed by any solvent institution existing under

the laws of the United States or of Canada, or any state or province thereof, which are not in default as to principal or interest and which are secured by collateral worth at least fifty percent (50%) more than the par value of the entire issue of such obligations, but only if not more than one-third ($1/3$) of the total value of the required collateral consists of common stock.

- (b) An insurer may invest in secured and unsecured obligations of the institutions, other than obligations described in subsection (a) of this section bearing interest at a fixed rate, with mandatory principal and interest due at specified times, if the net earnings of the issuing, assuming, or guaranteeing institution available for its fixed charges for a period of five (5) fiscal years next preceding the date of acquisition by the insurer have averaged per year not less than one and one-half ($1\frac{1}{2}$) times its average annual fixed charges applicable to the period and if, during either of the last two (2) years of the period, the net earnings have been not less than one and one-half ($1\frac{1}{2}$) times its fixed charges for the year.

23-63-815. Preferred or guaranteed stock.

- (a) An insurer may invest in preferred or guaranteed stocks or shares of any solvent institution existing under the laws of the United States or of Canada, or of any state or province thereof, if all of the prior obligations and prior preferred stocks, if any, of the institution at the date of the acquisition of the investment by the insurer are eligible as investments under this subchapter and if the net earnings of the institution available for its fixed charges during each of the last two (2) years have been, and during each of the last five (5) years have averaged, not less than one and one-half ($1\frac{1}{2}$) times the sum of its average annual fixed charges, if any, its average annual maximum contingent interest, if any, and its average annual preferred dividend requirements.
- (b) For the purposes of this section, the computation shall refer to the fiscal years immediately preceding the date of acquisition of the investment by the insurer, and the term "preferred dividend requirement" shall be deemed to mean cumulative or noncumulative dividends, whether paid or not.

23-63-816. Common stocks.

An insurer may invest in nonassessable, except for taxes and wages, common stocks other than insurance stocks of solvent United States or Canadian corporations that qualify as a sound investment.

23-63-817. Insurance stocks.

- (a) An insurer may invest in the stocks of other solvent insurers formed under the laws of this or another state if the stocks meet the applicable requirements of § 23-63-815 as to preferred or guaranteed stock or § 23-63-816 as to common stock; and, with the advance consent of the Insurance Commissioner, an insurer may invest in issued shares of its own capital stock, provided that these investments shall only be made from the insurer's earned surplus. Investments by an insurer in its own capital stock in accordance with the provisions of this section may be made by pro rata purchase from the insurer's shareholders or on a non-pro rata basis, at the election of the insurer.

- (b) With the commissioner's consent, an insurer may acquire and hold the controlling interest in the outstanding voting stock of another stock insurer formed under the laws of this or another state. All stocks under this subsection shall be subject to the limitation as to amount as provided in § 23-63-818.

23-63-818. Stocks of subsidiaries.

- (a) With the Insurance Commissioner's consent, an insurer may invest in the stock of its wholly owned subsidiary insurance corporation or in the stock of its wholly owned subsidiary business corporation formed or acquired for, and necessary and incidental to, the convenient operation of the insurer's insurance business or the administration of any of its lawful investments.
- (b) All of the insurer's investments under this section, together with its investments in insurance stocks under § 23-63-817(b), shall not at any time exceed the amount of the investing insurer's surplus if a life insurer, or its surplus to policyholders if other than a life insurer.

23-63-819. Equipment trust certificates.

An insurer may invest in equipment trust obligations or certificates adequately secured and evidencing an interest in transportation equipment, wholly or in part within the United States, which obligations or certificates carry the right to receive determined portions of rental, purchase, or other fixed obligatory payments to be made for the use or purchase of transportation equipment.

23-63-820. Investment trust securities.

An insurer may invest in the securities of any management-type investment company or investment trust registered with the federal Securities and Exchange Commission under the Investment Company Act of 1940, as from time to time amended, if the investment company or trust has been organized for not less than two (2) years and has assets not less than fifty million dollars (\$50,000,000) at the date of investment by the insurer.

23-63-821. Policy loans.

- (a) A life insurer may lend to its policyholder upon pledge of the policy as collateral security any sum not exceeding the cash surrender value of the policy or may lend against pledge or assignment of any of its supplementary contracts or its other contracts or obligations, so long as the loan is adequately secured by the pledge or assignment.
- (b) Loans so made are eligible investments of the insurer.

23-63-822. Collateral loans.

- (a) An insurer may lend and invest its funds upon the pledge of securities eligible for investment under this subchapter.
- (b) As at date made, no loan shall exceed in amount ninety percent (90%) of the market value of such collateral pledged.
- (c) The amount so loaned shall be included pro rata in determining the maximum

percentage of funds permitted under this subchapter to be invested in the respective categories of securities so pledged.

23-63-823. Savings and loan associations.

To the extent that an account does not exceed an amount equal to the sum of all reserve accounts, except specific or valuation reserves, undivided profits, surplus, and capital stock, but not including the proceeds of capital notes, debentures, or similar obligations, an insurer may invest in share or savings accounts of savings or building and loan associations.

23-63-824. Foreign securities.

- (a) An insurer may make investments, in aggregate amounts not exceeding five percent (5%) or, with prior approval of the Insurance Commissioner, ten percent (10%) of its assets, and not over three percent (3%) of its assets in any one (1) investment, in securities of or in a foreign country possessing characteristics and of a quality similar to the investment required pursuant to §§ 23-63-801, 23-63-833, and 23-63-835 for investments in the United States.
- (b) Canadian securities eligible for investment under other provisions of this subchapter are not subject to this section.

23-63-825. Additional investment authority.

- (a)(1) An insurer may acquire under this section investments, or engage in investment practices, of any kind that are not specifically prohibited by this subsection or elsewhere in the Arkansas Insurance Code, or engage in investment practices, without regard to any aggregate limitation in this subchapter, but an insurer shall not admit an investment or engage in an investment practice under this section if, as a result of and after giving effect to the transaction, the aggregate amount of the investments then held by the insurer under this section would exceed the lesser of:
 - (A) Ten percent (10%) of its admitted assets; or
 - (B) Seventy-five percent (75%) of its total capital and surplus.
- (2) This additional authority shall not apply to the following investments:
 - (A) Medium grade or lower grade-rated credit instruments;
 - (B) Mortgages or mortgage loans;
 - (C) Total of real estate, both home office and real estate held for investment income, except with the Insurance Commissioner's advance approval;
 - (D) Foreign investments and foreign currency exposures; and
 - (E) Derivatives.
- (3) As used in subsection (a) of this section, "insurer" means licensed domestic life and/or accident and health insurers or other licensed domestic reporting entities which transact life and/or accident or health contracts or plans in this state.
- (b)(1) An insurer may acquire under this section investments, or engage in investment practices, of any kind that are not specifically prohibited by this subchapter, or engage in investment practices, without regard to any aggregate limitation in this subchapter, but an insurer shall not admit an investment or engage in an investment

practice under this section if, as a result of and after giving effect to the transaction, the aggregate amount of the investments then held by the insurer under this section would exceed the lesser of:

- (A) Ten percent (10%) of its admitted assets; or
 - (B) Seventy-five percent (75%) of its total capital and surplus.
- (2) This additional authority shall not apply to the following investments:
- (A) Medium grade or lower grade-rated credit instruments;
 - (B) Equity interests;
 - (C) Mortgages or mortgage loans;
 - (D) Total of real estate, both home office and real estate held for investment income, except with the commissioner's advance approval;
 - (E) Foreign investments and foreign currency exposures; and
 - (F) Derivatives.
- (4) As used in subsection (b) of this section, "insurer" means domestic property, casualty, surety and/or marine, financial guaranty, and mortgage guaranty insurers, and domestic insurers transacting title insurance.
- (c) If upon enactment, the immediate application of the provisions of this section would have the effect of reducing the admitted asset value of assets held by a particular insurer, the insurer may continue to reflect as admitted those assets that would be admissible but for the enactment of the provisions of this section, until December 31, 2004.

23-63-826. Real estate mortgages.

- (a)(1) An insurer may invest any of its funds in bonds, notes, or other evidences of indebtedness which are secured by first mortgages or deeds of trust upon improved real property located in the United States or which are secured by first mortgages or deeds of trust upon leasehold estates having an unexpired term of not less than twenty-one (21) years, inclusive of the terms which may be provided by enforceable options of renewal, in improved real property located in the United States.
- (2) Investments made under this section may be effected by acquisition or by agreement to acquire, in the form of a guaranty, credit draw arrangement, or other like form.
- (3) In all cases the security for the loan must be a first lien upon the real property, and there must not be any condition or right of reentry or forfeiture not insured against, under which, in the case of real property other than leaseholds, the lien can be cut off or subordinated or otherwise disturbed or under which, in the case of leaseholds, the insurer is unable to continue the lease in force for the duration of the loan.
- (4) Nothing in this subsection shall prohibit any investment by reason of the existence of any prior lien for grounds rents, taxes, assessments, or other similar charges not yet delinquent.
- (5) This section shall not be deemed to prohibit investment in mortgages or similar obligations when made under § 23-63-824 as to foreign securities.
- (b) "Improved real estate" means all farmlands used for tillage, crop or pasture,

timberlands, and all real estate on which permanent improvements suitable for residence, institutional, commercial, or industrial use are, or are being, situated.

(c)(1) No mortgage loan made or acquired by an insurer on any one (1) property shall, at the time of investment by the insurer, exceed the larger of the following amounts, as applicable:

- (A) Three-fourths ($\frac{3}{4}$) of the value of real property or leasehold securing the loan;
 - (B) The amount of any insurance or guaranty of the loan by the United States or by any agency or instrumentality thereof or, with respect to single-family dwellings, by a mortgage insurance company authorized to transact business in this state; or
 - (C) Three-fourths ($\frac{3}{4}$) of the value of the real property or leasehold securing the loan, plus the amount by which the excess of the loan over the three-fourths ($\frac{3}{4}$) is insured or guaranteed by the United States or by any agency or instrumentality thereof or, with respect to single-family dwellings, by a mortgage insurance company authorized to transact such business in this state.
- (2) Except that, in the case of a purchase money mortgage given to secure the purchase price of real estate sold by the insurer, the amount so loaned or invested shall not exceed the unpaid portion of the purchase price.
- (d) No mortgage loan shall be made or acquired by an insurer except after an appraisal has been made by a competent appraiser for the purpose of the investment.
- (e) No mortgage loan made or acquired by an insurer which is a participation or a part of a series or issue secured by the same mortgage or deed of trust shall be a lawful investment under this section unless the entire series or issue which is secured by the same mortgage or deed of trust is held by the insurer or unless the insurer holds a participation in such a mortgage or deed of trust, giving it and other holders of the issue substantially the rights of a first mortgagee.
- (f) No mortgage loan upon a leasehold shall be made or acquired pursuant to this section unless the terms thereof shall provide for amortization payments to be made by the borrower on the principal thereof at least once in each year in amounts sufficient to amortize the loan completely within a period of four-fifths ($\frac{4}{5}$) of the term of the leasehold, inclusive of the terms which may be provided by enforceable options of renewal, which is unexpired at the time the loan is made, but in no event exceeding thirty-five (35) years.

23-63-827. Chattel mortgages.

- (a) In connection with a mortgage loan on the security of real estate designed and used primarily for residential purposes only, which mortgage loan was acquired pursuant to § 23-63-826, an insurer may lend or invest an amount not exceeding twenty percent (20%) of the amount loaned on or invested in the real estate mortgage on the security of a chattel mortgage to be amortized by regular periodic payments within a term of not more than five (5) years and representing a first and prior lien, except for taxes not then delinquent, on personal property constituting durable equipment owned by the mortgagor and kept and used in the mortgaged premises.
- (b) For the purposes of this section, the term "durable equipment" shall include only

mechanical refrigerators, air conditioning equipment, mechanical laundering machines, heating and cooking stoves and ranges, and, in addition, in the case of apartment houses and hotels, room furniture and furnishings.

- (c)(1) Prior to the acquisition of a chattel mortgage pursuant to this section, items of property to be included therein shall be separately appraised by a qualified appraiser and the fair market value thereof determined.
- (2) No chattel mortgage loan shall exceed in amount the same ratio of loan to the value of the property as is applicable to the companion loan on the real property.
- (d) This section shall not prohibit an insurer from taking liens on personal property as additional security for any investment otherwise eligible under this subchapter.

23-63-828. Real estate.

An insurer may invest in real estate only if used for the purposes or acquired in the manner and within the limits as follows:

- (1) The land and the buildings thereon in which it has its principal office and such other real estate as shall be requisite for its convenient accommodation in the transaction of its business. Except with the consent of the Insurance Commissioner, all the investments shall not aggregate more than ten percent (10%) of the insurer's assets;
- (2) Real estate acquired in satisfaction of loans, mortgages, liens, judgments, decrees, or debts previously owing to the insurer in the course of business;
- (3) Real estate acquired in part payment of the consideration on the sale of other real estate owned by it, if the transaction shall have effected a net reduction in the insurer's investment in real estate;
- (4) Real estate acquired by gift or devise, or through merger, consolidation, or bulk reinsurance of another insurer under this code;
- (5) The seller's interest in real property subject to an agreement of purchase or sale, but the sum invested in any parcel of real estate shall not exceed two-thirds ($\frac{2}{3}$) of the market value of the parcel;
- (6) Real estate, or any interest therein acquired or held by purchase, lease, or otherwise, as an investment for the production of income, or acquired to be improved or developed for investment purposes pursuant to an existing program therefor. The insurer may hold, improve, develop, maintain, manage, lease, sell, and convey real estate acquired by it under this provision. An insurer shall not have invested at any one (1) time an amount exceeding ten percent (10%) of its assets in real estate under this subdivision, except with the commissioner's consent;
- (7) Additional real estate, and equipment incidental to real estate, if necessary or convenient for the purpose of enhancing the sale or other value of real estate previously acquired or held by the insurer under subdivisions (2), (3), (4), or (6) of this section. The real estate and equipment shall be included, together with the real estate for the enhancement of which it was acquired, for the purpose of applicable investment limits, and shall be subject to disposal at the same time and under the same conditions as apply to enhanced real estate under § 23-63-819;
- (8) Investments made under this section may be effected by acquisition or by

agreement to acquire, in the form of a guaranty, credit draw arrangement, or other like form; and

- (9) Except with the commissioner's consent, all real estate owned by the insurer under this section, except as to seller's interest specified in subdivision (5) of this section, shall not at any one (1) time exceed twenty percent (20%) of the insurer's assets.

23-63-829. Time limit for disposal of real estate.

- (a) Except as stated in subsection (c) of this section, the insurer shall dispose of real estate acquired under § 23-63-828(1) within five (5) years after it has ceased to be necessary for the convenient accommodation of the insurer in the transaction of its business.
- (b) Except as stated in subsection (c) of this section, the insurer shall dispose of real estate acquired under § 23-63-828(2)-(4) within five (5) years after the date of acquisition.
- (c) Upon proof satisfactory to the Insurance Commissioner that the interests of the insurer will suffer materially by the forced sale thereof, the commissioner may by order grant a reasonable extension of the period as specified in the order. Within that specified period of time, the insurer shall dispose of any particular parcel of real estate, unless the insurer elects to hold the real estate as an investment for income purposes under § 23-63-828(6), in which event, the real estate shall be deemed to have been acquired at a cost equal to its book value at the time of the election and to be held under, and subject to, the provisions of § 23-63-828(6) after that time.

23-63-830. Time limit for disposal of other ineligible property and securities.

- (a) Any personal property or securities lawfully acquired by an insurer which it could not otherwise have invested in or loaned its funds upon at the time of the acquisition shall be disposed of within three (3) years from the date of acquisition, unless within that period the security has attained the status of eligibility.
- (b) However, any security or personal property acquired under any agreement of bulk reinsurance, merger, or consolidation may be retained for a longer period if so provided in the plan for reinsurance, merger, or consolidation as approved by the Insurance Commissioner under the Arkansas Insurance Code.
- (c) Upon application by the insurer and proof that forced sale of any property or security would materially injure the interests of the insurer, the commissioner may extend the disposal period for an additional reasonable time.

23-63-831. Failure to dispose of real estate, property, or securities.

- (a) Any real estate, personal property, or securities lawfully acquired and held by an insurer after expiration of the period for disposal thereof, or any extension of the period granted by the Insurance Commissioner as provided in § 23-63-829 or § 23-63-830, or any investments otherwise lawful which are in excess of the aggregate amount the insurer is authorized to invest in that category of investments under this subchapter shall not be allowed as an asset of the insurer.
- (b) The insurer shall forthwith dispose of any ineligible investment unlawfully acquired

by it, and the commissioner shall suspend or revoke the insurer's certificate of authority if the insurer fails to dispose of the investment within such reasonable time as the commissioner may, by order, specify.

23-63-832. Special investments by title insurer.

- (a)(1) In addition to other investments eligible under this subchapter, a title insurer may invest and have invested an amount not exceeding fifty percent (50%) of its paid-in capital stock in its abstract plant and equipment and, with the Insurance Commissioner's consent, in stocks of abstract companies.
- (2) If the insurer transacts kinds of insurance in addition to title insurance, for the purposes of this section, its paid-in capital stock shall be prorated between title insurance and other insurances upon the basis of the reserves maintained by the insurer for the various kinds of insurance. However, the capital so assigned to title insurance shall in no event be less than one hundred thousand dollars (\$100,000).
- (b) Investments authorized by this section shall not be credited against the insurer's required unearned premium or guaranty fund reserve provided for under § 23-63-610.

23-63-833. Prohibited investments.

In addition to investments excluded pursuant to other provisions of the Arkansas Insurance Code, an insurer shall not directly or indirectly invest in or lend its funds upon the security of:

- (1) Issued shares of its own capital stock, except for the purpose of mutualization under § 23-69-140 or with the advance consent of the Insurance Commissioner under § 23-63-817;
- (2) Except with the advance consent of the commissioner, securities issued by any corporation or enterprise the controlling interest of which is held, or will be held after the acquisition by the insurer, directly or indirectly by the insurer or any combination of the insurer and the insurer's directors, officers, parent corporation, subsidiaries, or controlling stockholders. Investments in subsidiaries under § 23-63-818 shall not be subject to this provision; or
- (3) Any note or other evidence of indebtedness of any director, officer, employee, or controlling stockholder of the insurer, except as to policy loans authorized under § 23-63-821.

23-63-834. Cancellation of treasury stock.

- (a) By resolution of its board of directors, any legal reserve life insurance company may cancel at any time all or any part of its treasury shares.
- (b)(1) In such an event, a statement of cancellation shall be filed as provided in this section.
- (2) Any statement of cancellation shall be executed and filed in accordance with the provisions of § 23-69-107(c), shall be verified by one (1) of the officers signing the statement, and shall set forth:
 - (A) The name of the insurance company;
 - (B) The number of treasury shares cancelled by resolution duly adopted by the

- board of directors, itemized by classes and series, and the date of its adoption;
 - (C) The aggregate number of issued shares, itemized by classes and series, after giving effect to the cancellation;
 - (D) The amount, expressed in dollars, of the paid-up capital of the insurance company, after giving effect to the cancellation; and
 - (E) A copy of the resolution effecting the cancellation.
- (3) When a statement of cancellation is filed in accordance with § 23-69-107(c), the paid-up capital of the insurance company shall be deemed to be reduced by that part of the paid-up capital which was, at the time of the cancellation, represented by the shares so cancelled, and the shares so cancelled shall be restored to the status of authorized but unissued shares.
- (c) Nothing contained in this section shall be construed to forbid a cancellation of shares or a reduction of stated capital in any other manner permitted by § 23-69-107.

23-63-835. Investments of foreign insurers.

- (a) The investments of a foreign or alien insurer shall be as permitted by the laws of its domicile but shall be of a quality substantially as high as those required under this subchapter for similar funds of like domestic insurers.
- (b) For the purposes of this section, the domicile of an alien insurer shall be as provided in § 23-63-104.

23-63-836. Certificates of deposit.

An insurer may invest in certificates of deposit or similar depository instruments issued by any bank, bank and trust company, savings bank, national bank association, savings and loan association incorporated under the laws of a state, or federal savings and loan association incorporated under the laws of the United States.

23-63-837. Property and facilities for fossil or synthetic fuel production.

- (a) An insurer may invest in property and facilities, and any interests and rights in properties and facilities, for the development and production of fossil or synthetic fuel or other minerals, including, but not limited to, investments relating to:
 - (1) The exploration for and development and production of those fuels and minerals; and
 - (2) Ownership and control of the property, facilities, interests, and rights.
- (b) Investment in property and facilities, and any interests and rights in the properties and facilities for the development and production of fossil or synthetic fuel or other minerals under this section shall not exceed two percent (2%) of the insurer's assets.

23-63-838. Risk limiting and related provisions.

- (a) As used in this section, unless the context otherwise requires:
 - (1) "Call option" means an option contract that entitles the holder to buy a fixed number of shares or a fixed amount of an underlying security at a stated price on or before a fixed expiration date;
 - (2) "Commodity Futures Trading Commission" means the federal regulatory agency

charged and empowered under the Commodity Futures Trading Commission Act of 1974, as amended, with the regulation of futures trading in commodities;

- (3) "Financial futures contract" means a contract of sale or option on a contract of sale made through a member of a board of trade which has been designated by the Commodity Futures Trading Commission as a contract market. Financial futures contracts shall be limited to the following categories:
 - (A) United States Treasury bills;
 - (B) Bonds and notes;
 - (C) Securities or pools of securities issued by the Government National Mortgage Association;
 - (D) Bank certificates of deposit;
 - (E) Standard and Poor's 500 Futures Index;
 - (F) New York Stock Exchange composite futures;
 - (G) Kansas City Value Line Futures; and
 - (H) Such other financial futures contracts which have been approved by and which are governed by the rules and regulations of the Commodity Futures Trading Commission and the respective contract markets on which the financial futures contracts are traded and which have been approved as financial futures contracts by rules and regulations adopted by the Insurance Commissioner;
 - (4) "Put option" means an option contract that entitles the holder to sell a fixed number of shares or a fixed amount of an underlying security at a stated price on or before a fixed expiration date;
 - (5) "Securities and Exchange Commission" means the federal regulatory agency charged and empowered under the Securities Exchange Act of 1934, as amended, with the regulation of trading in securities; and
 - (6) "Underlying security" means the security subject to being purchased or sold upon exercise of a call option or put option.
- (b)(1) An insurer may purchase put options or sell call options with regard to underlying securities owned by the insurer, or underlying securities which the insurer may reasonably expect to obtain through exercise of warrants or conversion rights owned by the insurer at the time the put option is purchased or the call option is sold.
 - (2) An insurer may sell put options or purchase call options on underlying securities, provided that the rights and obligations thereunder effectively offset the obligations and rights of the insurer under other options held by the insurer pertaining to the same underlying securities.
 - (3) An insurer may purchase or sell put options or call options only on underlying securities which are eligible for investment by an insurer under the Arkansas Insurance Code.
 - (4) An insurer may purchase or sell put or call options only through an exchange which is registered with the Securities and Exchange Commission as a national securities exchange pursuant to the provisions of the Securities Exchange Act of 1934, as amended, or for good cause shown through an over-the-counter transaction with a counterparty on the list of approved counterparties published in

the "Purposes and Procedures Manual" of the Securities Valuation Office of the National Association of Insurance Commissioners, or with a counterparty otherwise approved in advance by the Insurance Commissioner when a petition is filed with his or her office, or other such transactions approved in advance by the commissioner within his or her discretion.

- (c)(1) An insurer may purchase financial futures contracts for the purpose of minimizing the effect of falling interest rates. Purchases of financial futures contracts shall be limited as follows:
 - (A) For financial futures contracts on United States Treasury bills, bonds, and notes; securities or pools of securities issued by the Government National Mortgage Association; and bank certificates of deposit, the limits shall be as imposed by the Arkansas Insurance Code for the investments with applicable limits being calculated by adding the cash positions and the financial futures contract positions;
 - (B) For all other categories of financial futures contracts together, an insurer may invest at any one time in an aggregate amount not more than five percent (5%) of its assets.
- (2) An insurer may sell financial futures contracts for the purpose of hedging against the effects of rising interest rates and corresponding declining prices.
- (d)(1) Written investment policies and recordkeeping procedures shall be approved by the board of directors of the insurer before the insurer may engage in the practices and activities authorized by this section.
- (2) These policies and procedures must be specific enough to define and control permissible and suitable investment strategies with regard to put options, call options, and financial futures contracts with the view toward the protection of the policyholders.
- (3) All transactions in put options, call options, and financial futures contracts permitted by this section shall be authorized or approved by the insurer's board of directors or by a committee authorized by the board and charged with the supervision or making of the transactions.
- (4) The minutes of any committee shall be recorded and regular reports of the committee shall be submitted to the board of directors.
- (e) The commissioner may promulgate rules, guidelines, and regulations establishing standards and requirements relating to practices and activities authorized in this section.

23-63-839. Negotiable bills of exchange or time drafts.

An insurer may invest in negotiable bills of exchange or time drafts issued and unconditionally guaranteed by any bank, bank and trust company, national bank association, or domestic branch or agency of a foreign bank subject to reserve requirements under § 7 of the National Banking Act of 1978, as amended, provided that:

- (1) The underlying transaction involves a trade financing and has a maturity no longer than six (6) months sight to run exclusive of days of grace;
- (2) The insurer invests not more than twenty-five percent (25%) of its assets in bankers acceptances; and

- (3) The insurer invests not more than ten percent (10%) of its assets in any one (1) bankers acceptance in any one (1) financial institution.

23-63-840. Collateralized mortgage obligations.

- (a)(1) An insurer may invest in collateralized mortgage obligations provided that the underlying mortgages pledged to the repayment of principal and interest of the collateralized mortgage obligation are in themselves unconditionally guaranteed as to timely repayment of principal and interest by the United States or by any agency or instrumentality of the United States; and provided that the specific investment right within that collateralized mortgage obligation is not a zero coupon class, residual interest, or a class designated as principal or interest only. Provided that the aggregate amount of collateralized mortgage obligations secured by or evidencing an interest in a single asset or single pool of assets held by a trust or other business entity, then held by the insurer would not exceed five percent (5%) of the insurer's total admitted assets.
 - (2) For purposes of the "one person" diversification restriction found in § 23-63-805(1), collateral mortgage obligations issued by the United States or any agency or instrumentality of the United States shall not be considered investments in or loans upon the security of the obligations, property, or securities of the United States or any such agency or instrumentality of the United States.
 - (3) If upon enactment, the immediate application of this provision would have the effect of reducing the admitted asset value of assets held by a particular insurer, the insurer may continue to reflect as admitted those assets that would be admissible but for the enactment of this provision, until the annual statement filing for the year ended December 31, 2004.
- (b) An insurer may invest up to ten percent (10%) of its assets in zero coupon, residual interest, or principal or interest only classes of collateralized mortgage obligations, provided that the underlying mortgages pledged to the repayment of principal and interest of the collateralized mortgage obligation are in themselves unconditionally guaranteed as to timely repayment of principal and interest by the United States or any agency or instrumentality of the United States.

Subchapter 9. Deposits.

23-63-901. Authorized deposits of insurers.

The following deposits of insurers when made through the Insurance Commissioner shall be accepted and held, and shall be subject to the provisions of this subchapter:

- (1) Deposits required under the Arkansas Insurance Code for authority to transact insurance in this state;
- (2) Deposits of domestic insurers when made pursuant to the laws of other states, provinces, and countries as requirement for authority to transact insurance in that state, province, or country;
- (3) Deposits of reserves made by domestic life insurers under § 23-81-130;

- (4) Deposits in such additional amounts as are permitted to be made under § 23-63-908.

23-63-902. Purpose.

Deposits shall be held for purposes as follows:

- (1) Deposits made in this state under § 23-63-206 shall be held for the purposes stated in that section;
- (2) A deposit made in this state by a domestic insurer transacting insurance in another state, province, or country and as required by the laws of that state, province, or country shall be held for the protection of the insurer's policyholders, or policyholders and creditors;
- (3) Deposits of reserves made by domestic life insurers under § 23-81-130 shall be held for the common benefit of all the holders of its life insurance policies and annuity contracts; and
- (4) Deposits required pursuant to the retaliatory provisions, §§ 23-63-102 - 23-63-104, shall be held for such purposes as required by such laws and as specified in the Insurance Commissioner's order requiring the deposit.

23-63-903. Eligible securities.

- (a) All deposits required under § 23-63-206 for authority to transact insurance in this state shall consist of certified checks or certificates of deposit, or any combination of securities, the market value of which is readily ascertainable and, if negotiable by delivery or assignment, of the kinds described in the following sections of the Arkansas Insurance Code:
 - (1) Section 23-63-806, United States Government obligations;
 - (2) Section 23-63-808, state, county, municipal, and school obligations;
 - (3) Section 23-63-809, municipal or county utilities;
 - (4) Section 23-63-811, local industrial development bonds;
 - (5) Section 23-63-813, international banks; and
 - (6) Section 23-63-814, corporate bonds and debentures.
- (b) All deposits required of a domestic insurer pursuant to the laws of another state, province, or country shall be composed of securities, if negotiable by delivery or assignment, of the kinds required or permitted by the laws of the state, province, or country, except common stocks, mortgages of any kind, and real estate.
- (c) Deposits of the reserves of a domestic life insurer under § 23-81-130 shall consist of securities, if negotiable by delivery or assignment, and assets eligible for investment of the insurer's reserves under § 23-63-805(3).
- (d) Deposits of foreign insurers made in this state under the retaliatory provision, §§ 23-63-102 - 23-63-104, shall consist of such assets as are required by the Insurance Commissioner pursuant to the provision.

23-63-904. Depositary or custodian.

- (a) Deposits made under the Arkansas Insurance Code shall be made through the office of the Insurance Commissioner in safe deposit or under custodial arrangements as

required or approved by the commissioner consistent with the purposes of the deposit with an established safe deposit institution, bank, or trust company, or under other safekeeping arrangements, located in this state, and selected by the insurer with the commissioner's approval.

- (b) Except in the presence of the commissioner or his or her authorized representative, the insurer shall not have access to any securities or assets representing its deposits so held in safe deposit.
- (c) The form and terms of all depositary or custodial agreements shall be as prescribed or approved by the commissioner consistent with the applicable provisions of the Arkansas Insurance Code.
- (d) The compensation and expenses of the depositary or custodian shall be borne by the insurer.

23-63-905. Record - Liability of commissioner and state.

- (a) The Insurance Commissioner shall keep a record of the securities and assets comprising each deposit and of all his or her transactions relative thereto, showing by item the amount and market value.
- (b) The commissioner and the State of Arkansas shall have no liability as to the safekeeping of any deposit by the depositary or custodian.

23-63-906. Assignment or conveyance of securities or assets - Appraisal.

- (a)(1) All securities not negotiable by delivery and deposited by an insurer, other than under § 23-81-130, shall be assigned to the Insurance Commissioner and his or her successors in office.
- (2) All other assets so deposited shall be transferred or conveyed to the commissioner.
- (3) Upon release of any security or asset to the insurer, the commissioner shall reassign, transfer, or reconvey the asset or security to the insurer.
- (b) The commissioner may, in his or her discretion, prior to acceptance for deposit of any security or asset, or at any time thereafter while so deposited, have the security or asset appraised or valued by competent appraisers. The reasonable costs of the appraisal or valuation shall be borne by the insurer.

23-63-907. Rights of insurer during solvency.

So long as the insurer remains solvent and is in compliance with the Arkansas Insurance Code, it may:

- (1) Demand, receive, sue for, and recover the income from the securities or assets deposited;
- (2) Exchange and substitute for the deposited securities or assets, or any part thereof, other eligible securities and assets of equivalent or greater value; and
- (3) At any reasonable time inspect the deposit.

23-63-908. Excess deposits.

- (a) An insurer may so deposit assets or securities in an amount exceeding its deposit

required or otherwise permitted under the Arkansas Insurance Code by not more than twenty percent (20%) of the required or permitted deposit or one hundred thousand dollars (\$100,000), whichever is the larger amount, for the purpose of absorbing fluctuations in the value of securities and assets deposited and to facilitate the exchange and substitution of such securities and assets.

- (b)(1) During the solvency of the insurer, any excess shall be released to the insurer upon its request.
- (2) During the insolvency of the insurer, the excess deposit shall be released only as provided in § 23-63-911(b)(3).

23-63-909. Payment of claims.

- (a)(1)(A) If any insurer which has made the deposit in this state pursuant to § 23-63-206 fails to pay promptly any final judgment entered against it in favor of a citizen of this state, the Insurance Commissioner is authorized to sell at public or private sale, after forty-five (45) days' notice to the insurer by certified mail, a sufficient amount of securities to pay the claim.

(B) For purposes of this section, "final judgment" means any judgment issued by a court of record and the enforcement or execution of which has not been stayed by a court of competent jurisdiction.

- (2) Except as provided in this section and as otherwise provided in the Arkansas Insurance Code, no deposit made in this state pursuant to § 23-63-206 by any insurer shall be subject to garnishment, levy, or execution.
- (b)(1) The commissioner, under procedures he or she shall prescribe, may release any part of the special additional four percent (4%) accident and health deposit to the insurer.
- (2) Provided, that any funds withdrawn pursuant to this subsection shall be replaced within one hundred eighty (180) days after such a withdrawal.

23-63-910. Deficiency.

- (a)(1) If for any reason the market value of assets and securities of an insurer held on deposit in this state under § 23-63-206 or under the retaliatory provision, §§ 23-63-102 - 23-63-104, falls below the amount so required, then the insurer shall promptly deposit other or additional assets or securities eligible for deposit sufficient to cure the deficiency.
- (2) If the insurer has failed to cure the deficiency within thirty (30) days after receipt of notice of deficiency by registered mail from the Insurance Commissioner, the commissioner shall revoke the insurer's certificate of authority.
- (b)(1) If for any reason the market value of assets and securities of a domestic life insurer, representing deposit of the reserves of certain of its outstanding policies and annuity contracts under § 23-81-130, falls below the amount so required and as determined from the insurer's most recent annual statement or most recent examination of the insurer by the commissioner, then the insurer shall promptly deposit other or additional assets or securities eligible for deposit sufficient to cure the deficiency.
- (2) If the insurer has failed to cure the deficiency, after the commissioner has given

the insurer notice of deficiency by registered mail, within such reasonable time, not exceeding ninety (90) days, as may be allowed by the commissioner and so specified in his or her notice, the insurer shall be deemed to be insolvent. The commissioner shall then revoke its certificate of authority and institute delinquency proceedings against the insurer under §§ 23-68-101 - 23-68-113 and 23-68-115 - 23-68-132.

23-63-911. Duration and release of deposit generally.

- (a) Subject to the right of the insurer to substitute securities as provided in § 23-63-907, all deposits in this state under § 23-63-206 shall be left on deposit as long as there is outstanding any liability of the insurer with respect to which the deposit was made.
- (b) Any deposit referred to in subsection (a) of this section, or any deposit made under the retaliatory provision, §§ 23-63-102 - 23-63-104, or under any other provision of the Arkansas Insurance Code other than § 23-81-130, shall be released and returned:
 - (1) To the insurer upon the extinguishment by reinsurance, or otherwise, of all liability of the insurer for the security of which the deposit is held;
 - (2) To the insurer, during solvency, to the extent the deposit is in excess of the amount required; or
 - (3) Upon proper order of a court of competent jurisdiction in this state, to the ancillary receiver of the insurer in this state or to the domiciliary receiver, conservator, rehabilitator, liquidator of the insurer, or to any other properly designated official who succeeds to the management and control of the insurer's assets.

23-63-912. Duration and release of deposit of life insurance and annuity reserves.

- (a) Deposits of assets and securities representing, and at least equal in amount to, the reserves of a domestic life insurer under certain of its life insurance policies and annuity contracts and deposited under § 23-81-130 shall be held as long as the policies and contracts with respect to which the reserves exist are in force.
- (b) With respect to policies and contracts in force, the applicable portion of the deposit shall not be released, whether or not the policies or contracts have been reinsured or the entire liability thereunder assumed by another insurer or the issuing insurer has become insolvent, subject to delinquency proceedings, or has been dissolved.
- (c) Upon proof satisfactory to the Insurance Commissioner that certain of the policies or contracts previously in force have lapsed, been surrendered for cash value, matured, or otherwise terminated and that all liabilities of the insurer to policyholders and beneficiaries with respect to those policies or contracts have been fully paid and discharged, the commissioner may release any applicable portion of the deposit if the deposit is then in excess of the amount otherwise required. The commissioner may accept and rely upon records of the insurer as kept, summarized, and reported to him or her in the regular course of its business, as to any such payment and discharge.
- (d)(1) If the issuing insurer, or any insurer which may have assumed direct liability with respect to any policy or contract, becomes insolvent, the commissioner shall make or cause to be made, pursuant to such reasonable procedure therefor as he or she may

deem proper, direct payment to persons entitled thereto under the terms of those policies or contracts of the proportionate interest of the person in the assets and securities then held on deposit, after deducting from the deposit the expenses actually incurred by the commissioner, if any, in making the distribution to the extent that the expenses cannot be met out of the insurer's other assets without diminution of the equity therein of other policyholders, contract holders, and creditors of the insurer.

- (2) In the event of insolvency, the commissioner shall release to the receiver or rehabilitator of the insurer the excess, if any, of the deposit over the amount thereof necessary to discharge in full the obligations of the insurer as to policies and contracts for which the deposit is so held, together with the reasonable costs and expenses to be incurred by the commissioner in the discharge of the obligations as provided in this subsection.
- (e) If the issuing or assuming insurer is insolvent, for the purposes of subsection (d) of this section, the commissioner shall accept and rely upon the records of the insurer as to the identity of persons to whom the deposit is payable under policies and annuity contracts and the amount to which respectively entitled.

Subchapter 10. Sureties on Bonds.

23-63-1001. Court, judicial, and certain other bonds.

- (a)(1) Upon compliance with the provisions of this code, a surety insurer may become surety upon any bond or other contract of any person and may become surety upon any bond required to be given by any person in the course of judicial proceedings or upon the bonds of administrators, executors, guardians, receivers, assignees, trustees, or other fiduciaries required to give the bond.
- (2) The obligation of the insurer as surety upon those bonds or contracts may be accepted by the court, officer, board, or person required to approve the bond or contract as the sole surety upon the bond or contract even though previous laws or customs may have required two (2) sureties upon the bonds or contracts or may have required one (1) or more of the sureties to be residents of any particular territory.
- (b) Where these bonds are given by administrators, executors, guardians, receivers, assignees, trustees, or other officers of the court, the court appointing the officers may allow the expense incurred by the officers in securing this bond in the insurer as part of the expenses of the trust to be paid out of the fund.

23-63-1002. Bonds given by state, county, or municipal officers.

- (a) All bonds or other obligations required or desired to be given by any state, county, or municipal officer for the due performance of the duties of his or her office or for the due accounting of money coming to his or her hands or for any other purpose whatever shall be sufficient when executed by a surety insurer authorized to transact business under the Arkansas Insurance Code as sole surety upon the bonds or obligations, whether or not previous laws required the bond to be executed by more

than one (1) surety, or, provided that one (1) or more of the sureties upon the bond should be resident of this state, or any particular county therein, or resident of any specified territory.

- (b) All officers, courts, and boards of this state, any county therein, or any municipality whose duty it is or shall be to approve the official bonds of any state, county, or municipal officer shall approve the bond as to its sureties when the insurer is the sole surety thereon.

23-63-1003. Insurer's rights as surety same as individual's.

- (a) A surety insurer authorized as such under the Arkansas Insurance Code shall have the same power and authority to become surety upon all bonds required by law or desired by contracting parties and shall be vested with the same rights and be subject to all the liabilities as individuals who become sureties on the bonds or contracts.
- (b) A surety insurer which is surety upon any bond or contract may be released from its liability thereon on the same terms and conditions as are by law prescribed for the release of individuals as sureties.

23-63-1004. Estoppel to deny corporate power to be surety.

In any action brought against a surety insurer to enforce the liability assumed by it under any bond or contract, the insurer is estopped from denying its corporate or other power to execute that bond or guaranty or to assume the liability.

Subchapter 11.

Business Transacted with Producer Controlled Property and Casualty Insurer Act.

23-63-1101. Title.

This subchapter may be cited as the "Business Transacted with Producer Controlled Property and Casualty Insurer Act".

23-63-1102. Definitions.

As used in this subchapter:

- (1) "Accredited state" means a state in which the insurance department or regulatory agency has qualified as meeting the minimum financial regulatory standards promulgated and established from time to time by the National Association of Insurance Commissioners;
- (2) "Control" or "controlled" has the meaning set out in § 23-63-503(2);
- (3) "Controlled insurer" means a licensed insurer which is controlled, directly or indirectly, by a producer;
- (4) "Controlling producer" means a producer who, directly or indirectly, controls an insurer;
- (5)(A) "Licensed insurer" or "insurer" means any person, firm, association, or corporation duly licensed to transact a property and casualty insurance business in

this state.

(B) The following, inter alia, are not licensed insurers for the purposes of this subchapter:

- (i) All risk retention groups as defined in the Superfund Amendments Reauthorization Act of 1986, the Product Liability Risk Retention Act of 1981, and §§ 23-94-101 - 23-94-108 [repealed], 23-94-201 - 23-94-209 [revised], and 23-94-301 - 23-94-303 [repealed];
 - (ii) All residual market pools and joint underwriting authorities or associations; and
 - (iii) All captive insurers, i.e., insurance companies owned by another organization whose exclusive purpose is to insure risks of the parent organization and affiliated companies or, in the case of groups and associations, insurance organizations owned by the insureds whose exclusive purpose is to insure risks of member organizations and group members and their affiliates; and
- (6) "Producer" means an insurance broker or brokers or any other person, firm, association, or corporation, when, for any compensation, commission, or other thing of value, such a person, firm, association, or corporation acts or aids in any manner in soliciting, negotiating, or procuring the making of any insurance contract on behalf of an insured other than the person, firm, association, or corporation.

23-63-1103. Date of required compliance.

Compliance with this subchapter shall be required on and after January 1, 1994.

23-63-1104. Applicability.

- (a) This subchapter shall apply to licensed insurers as defined in § 23-63-1102 either domiciled in this state or domiciled in a state that is not an accredited state having in effect a substantially similar law.
- (b) All provisions of § 23-63-501 et seq., to the extent they are not superseded by the provisions of this subchapter, shall continue to apply to all parties within holding company systems subject to the provisions of this subchapter.

23-63-1105. Minimum standards.

- (a)(1) The provisions of this section shall apply if, in any calendar year, the aggregate amount of gross premiums on business placed with a controlled insurer by a controlling producer is equal to or greater than five percent (5%) of the admitted assets of the controlled insurer, as reported in the controlled insurer's quarterly statement filed as of September 30 of the prior year.
- (2) Notwithstanding subdivision (a)(1) of this section, the provisions of this section shall not apply if:
 - (A) The controlling producer:
 - (i) Places insurance only with the controlled insurer, or only with the controlled insurer and a member or members of the controlled insurer's

- holding company system, or the controlled insurer's parent, affiliate, or subsidiary and receives no compensation based upon the amount of premiums written in connection with such insurance; and
- (ii) Accepts insurance placements only from nonaffiliated subproducers, and not directly from insureds; and
- (B) The controlled insurer, except for insurance business written through a residual market facility, accepts insurance business only from a controlling producer, a producer controlled by the controlled insurer, or a producer that is a subsidiary of the controlled insurer.
- (b) A controlled insurer shall not accept business from a controlling producer and a controlling producer shall not place business with a controlling insurer unless there is a written contract between the controlling producer and the insurer specifying the responsibilities of each party, which contract has been approved by the board of directors of the insurer and contains the following minimum provisions:
- (1)(A) The controlled insurer may terminate the contract for cause, upon written notice to the controlling producer.
 - (B) The controlled insurer shall suspend the authority of the controlling producer to write business during the pendency of any dispute regarding the cause for the termination;
 - (2) The controlling producer shall render accounts to the controlled insurer detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by, or owing to, the controlling producer;
 - (3)(A) The controlling producer shall remit all funds due under the terms of the contract to the controlled insurer on at least a monthly basis.
 - (B) The due date shall be fixed so that premiums or installments thereof collected shall be remitted no later than ninety (90) days after the effective date of any policy placed with the controlled insurer under the contract;
 - (4)(A) All funds collected for the controlled insurer's account shall be held by the controlling producer in a fiduciary capacity in one (1) or more appropriately identified bank accounts in banks that are members of the Federal Reserve System.
 - (B) However, funds of a controlled producer not required to be licensed in this state shall be maintained in compliance with the requirements of the controlling producer's domicile;
 - (5) The controlling producer shall maintain separately identifiable records of business written for the controlled insurer;
 - (6) The contract shall not be assigned in whole or in part by the controlling producer;
 - (7)(A) The controlled insurer shall provide the controlling producer with its underwriting standards, rules, and procedures, manuals setting forth the rates to be charged, and the conditions for the acceptance or rejection of risks.
 - (B)(i) The controlling producer shall adhere to the standards, rules, procedures, rates, and conditions.
 - (ii) The standards, rules, procedures, rates, and conditions shall be the same as those applicable to comparable business placed with the controlled

- insurer by a producer other than a controlling producer;
- (8)(A) The rates and terms of the controlling producer's commissions, charges, or other fees and the purposes for those charges or fees.
- (B)(i) The rates of the commissions, charges, and other fees shall be no greater than those applicable to comparable business placed with the controlled insurer by producers other than controlling producers.
- (ii) For purposes of this subdivision (b)(8) and subdivision (b)(7) of this section, examples of "comparable business" include the same lines of insurance, same kinds of insurance, same kinds of risks, similar policy limits, and similar quality of business;
- (9)(A) If the contract provides that the controlling producer on insurance business placed with the insurer is to be compensated contingent upon the insurer's profits on that business, then such a commission shall not be determined and paid until at least five (5) years after the premiums on liability insurance are earned and at least one (1) year after the premiums are earned on any other insurance.
- (B) In no event shall the commissions be paid until the adequacy of the controlled insurer's reserves on remaining claims has been independently verified pursuant to subsection (c) of this section;
- (10)(A) A limit on the controlling producer's writings in relation to the controlled insurer's surplus and total writings.
- (B) The insurer may establish a different limit for each line or subline of business.
- (C)(i) The controlled insurer shall notify the controlling producer when the applicable limit is approached and shall not accept business from the controlling producer if the limit is reached.
- (ii) The controlling producer shall not place business with the controlled insurer if it has been notified by the controlled insurer that the limit has been reached; and
- (11) The controlling producer may negotiate but shall not bind reinsurance on behalf of the controlled insurer on business the controlling producer places with the controlled insurer, except that the controlling producer may bind facultative agreements if the contract with the controlled insurer contains underwriting guidelines including, for reinsurance both assumed and ceded, a list of reinsurers with which such automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured, and commission schedules.
- (c)(1) Every controlled insurer shall have an audit committee of the board of directors, composed of independent directors.
- (2) The audit committee shall annually meet with management, the insurer's independent certified public accountants, and an independent casualty actuary or other independent loss reserve specialist acceptable to the Insurance Commissioner to review the adequacy of the insurer's loss reserves.
- (d)(1) In addition to any other required loss certification, the controlled insurer shall annually, on April 1 of each year, file with the commissioner an opinion of an independent casualty actuary, or such other independent loss reserve specialist acceptable to the commissioner, reporting loss ratios for each line of business written

and attesting to the adequacy of loss reserves established for losses incurred and outstanding as of the year's end, including losses incurred but not reported, on business placed by the producer.

- (2) The controlled insurer shall annually report to the commissioner the amount of commissions paid to the producer, the percentage such an amount represents of the net premiums written, and comparable amounts and percentages paid to noncontrolling producers for placements of the same kinds of insurance.

23-63-1106. Disclosure.

The producer, prior to the effective date of the policy, shall deliver written notice to the prospective insured disclosing the relationship between the producer and the controlled insurer, except that, if the business is placed through a subproducer who is not a controlling producer, the controlling producer shall retain in his or her records a signed commitment from the subproducer that the subproducer is aware of the relationship between the insurer and the producer and that the subproducer has or will notify the insured.

23-63-1107. Penalties.

- (a)(1) If the Insurance Commissioner believes that the controlling producer or any other person has not materially complied with this subchapter, after notice and hearing, the commissioner may order the controlling producer to cease placing business with the controlled insurer.
- (2) If it is found that because of such material noncompliance the controlled insurer or any policyholder thereof has suffered any loss or damage, the commissioner may maintain a civil action or intervene in an action brought by or on behalf of the insurer or policyholder for recovery of compensatory damages for the benefit of the insurer or policyholder or other appropriate relief.
- (b) If an order for liquidation or rehabilitation of the controlled insurer has been entered pursuant to § 23-68-101 et seq., and the receiver appointed under that order believes that the controlling producer or any other person has not materially complied with this subchapter, and the insurer suffered any loss or damage therefrom, the receiver may maintain a civil action for recovery of damages or other appropriate sanctions for the benefit of the insurer.
- (c) Nothing contained in this section shall affect the right of the commissioner to impose any other penalties provided for in the Arkansas Insurance Code.
- (d) Nothing contained in this section is intended to or shall in any manner alter or affect the rights of policyholders, claimants, creditors, or other third parties.

Subchapter 12.

Annual Reports by Property and Casualty Insurers.

23-63-1201. Regulations.

The Insurance Commissioner shall promulgate regulations which shall require each insurer licensed to write property and casualty insurance in this state to submit an annual

report on a form furnished by the commissioner showing its direct writings in this state.

23-63-1202. Contents of report.

- (a) The report required by this subchapter shall include, but not be limited to, the following types of insurance written by such insurer:
 - (1) Motor vehicle bodily injury liability insurance, including medical pay insurance;
 - (2) Products liability insurance;
 - (3) Medical malpractice insurance;
 - (4) Architects' and engineers' malpractice insurance;
 - (5) Attorneys' malpractice insurance;
 - (6) Motor vehicle personal injury protection insurance;
 - (7) Motor vehicle property liability insurance;
 - (8) Uninsured motorist insurance;
 - (9) Underinsured motorist insurance; and
 - (10) Workers' compensation insurance.
- (b) The report shall include the following data for the previous year ending on December 31:
 - (1) Direct premiums written;
 - (2) Direct premiums earned;
 - (3) Net investment income, including net realized capital gains and losses, using appropriate estimates where necessary;
 - (4) Incurred claims developed as the sum of, and with figures provided for, the following:
 - (A) Dollar amount of claims paid current year or paid losses; plus
 - (B) Reserves for reported claims at the end of the current year; minus
 - (C) Reserves for reported claims at the end of the previous year; plus
 - (D) Reserves for incurred but not reported claims at the end of the current year; minus
 - (E) Reserves for incurred but not reported claims at the end of the previous year; plus
 - (F) Reserves for loss adjustment expense at the end of the current year reported split between allocated loss adjustment expenses and unallocated loss adjustment expenses; minus
 - (G) Reserves for loss adjustment expense at the end of the previous year reported split between allocated loss adjustment expenses and unallocated loss adjustment expenses;
 - (5) Actual incurred expenses allocated separately to loss adjustment, commissions, other acquisition costs, general office expenses, taxes, licenses, fees, and all other expenses;
 - (6) Net underwriting gain or loss;
 - (7) Net operation gain or loss, including net investment income;
 - (8) Net investment gain on surplus, allocated to the lines as a percentage of the previous year's incurred losses;

- (9) Federal income taxes paid, allocated to the lines as a percentage of earned premium; and
- (10) Return on surplus with surplus allocated to the lines based upon earned premiums.

23-63-1203. Due date.

The report shall be due by May 1 of each year.

23-63-1204. Compilation and review - Publication.

- (a) It shall be the duty of the Insurance Commissioner to annually compile and review all reports submitted by insurers pursuant to this subchapter.
- (b) The filings shall be published and made available to any interested insured or citizen.

23-63-1205. Failure to comply with content requirement.

Any failure to comply with the provisions of § 23-63-1202 shall be punished pursuant to the Trade Practices Act, § 23-66-201 et seq.

Subchapter 13. Risk-Based Capital.

23-63-1301. Title.

This subchapter may be cited as the "Risk-Based Capital Act".

23-63-1302. Definitions.

As used in this subchapter, these terms shall have the following meanings:

- A. "Adjusted RBC Report" means an RBC report which has been adjusted by the Insurance Commissioner in accordance with § 23-63-1303(E).
- B. "Corrective order" means an order issued by the commissioner specifying corrective actions which the commissioner has determined are required.
- C. "Domestic insurer" means any insurance company domiciled in this state.
- D. "Foreign insurer" means any insurance company which is authorized to do business in this state pursuant to § 23-63-201 et seq. but is not domiciled in this state.
- E. "NAIC" means the National Association of Insurance Commissioners.
- F. "Life and/or accident and health insurer" means any insurance company authorized to transact a life and/or accident and health insurance business pursuant to § 23-63-201 et seq.
- G. "Property or casualty insurer" means any insurance company authorized to transact property or casualty insurance business pursuant to § 23-63-201 et seq., including farmers' mutual aid associations, and fraternal benefit societies, but shall not include monoline mortgage guaranty insurers, financial guaranty insurers, and title insurers.
- H. "Negative trend" means, with respect to a life and/or accident and health insurer, negative trend over a period of time, as determined in accordance with the "Trend Test Calculation" included in the RBC Instructions.

- I. "RBC Instructions" means the RBC Report including risk-based capital instructions adopted by the NAIC, as such RBC Instructions may be amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC.
- J. "RBC Level" means an insurer's Company Action Level RBC, Regulatory Action Level RBC, Authorized Control Level RBC, or Mandatory Control Level RBC where:
 - (1) "Company Action Level RBC" means, with respect to any insurer, the product of 2.0 and its Authorized Control Level RBC;
 - (2) "Regulatory Action Level RBC" means the product of 1.5 and its Authorized Control Level RBC;
 - (3) "Authorized Control Level RBC" means the number determined under the risk-based capital formula in accordance with the RBC Instructions;
 - (4) "Mandatory Control Level RBC" means the product of .70 and the Authorized Control Level RBC.
- K. "RBC Plan" means a comprehensive financial plan containing the elements specified in § 23-63-1304(B). If the commissioner rejects the RBC Plan, and it is revised by the insurer, with or without the commissioner's recommendation, the plan shall be called the "Revised RBC Plan".
- L. "RBC Report" means the report required in § 23-63-1303.
- M. "Total adjusted capital" means the sum of:
 - (1) An insurer's statutory capital and surplus as determined in accordance with the statutory accounting applicable to the annual financial statements required to be filed under § 23-63-216; and
 - (2) Such other items, if any, as the RBC Instructions may provide.
- N. "Commissioner" means the Insurance Commissioner for the State of Arkansas unless the context requires otherwise.

23-63-1303. RBC Reports.

- A. Every domestic insurer shall, on or prior to each March 1, prepare and submit to the Insurance Commissioner a report of its RBC Levels as of the end of the calendar year just ended, in a form and containing such information as is required by the RBC Instructions. In addition, every domestic insurer shall file its RBC Report:
 - (1) With the NAIC in accordance with the RBC Instructions; and
 - (2) With the insurance commissioner in any state in which the insurer is authorized to do business, if the insurance commissioner has notified the insurer of its request in writing, in which case the insurer shall file its RBC Report not later than the later of:
 - (a) Fifteen (15) days from the receipt of notice to file its RBC Report with that state; or
 - (b) The filing date.
- B. A life and/or accident and health insurer's RBC shall be determined in accordance with the formula set forth in the RBC Instructions. The formula shall take into account and may adjust for the covariance between:
 - (1) The risk with respect to the insurer's assets;

- (2) The risk of adverse insurance experience with respect to the insurer's liabilities and obligations;
 - (3) The interest rate risk with respect to the insurer's business; and
 - (4) All other business risks and such other relevant risks as are set forth in the RBC Instructions; determined in each case by applying the factors in the manner set forth in the RBC Instructions.
- C. A property and casualty insurer's RBC shall be determined in accordance with the formula set forth in the RBC Instructions. The formula shall take into account and may adjust for the covariance between:
 - (1) Asset risk;
 - (2) Credit risk;
 - (3) Underwriting risk; and
 - (4) All other business risks and such other relevant risks as are set forth in the RBC Instructions; determined in each case by applying the factors in the manner set forth in the RBC Instructions.
- D. An excess of capital over the amount produced by the risk-based capital requirements contained in this subchapter and the formulas, schedules and instructions referenced in this subchapter is desirable in the business of insurance. Accordingly, insurers should seek to maintain capital above the RBC levels required by this subchapter. Additional capital is used and useful in the insurance business and helps to secure an insurer against various risks inherent in, or affecting, the business of insurance and not accounted for or only partially measured by the risk-based capital requirements contained in this subchapter.
- E. If a domestic insurer files an RBC Report which in the judgment of the commissioner is inaccurate, then the commissioner shall adjust the RBC Report to correct the inaccuracy and shall notify the insurer of the adjustment. The notice shall contain a statement of the reason for the adjustment. An RBC Report as so adjusted is referred to as an "Adjusted RBC Report".

23-63-1304. Company Action Level Event.

- A. "Company Action Level Event" means any of the following events:
 - (1) The filing of an RBC Report by an insurer which indicates that:
 - (a) The insurer's Total Adjusted Capital is greater than or equal to its Regulatory Action Level RBC but less than its Company Action Level RBC; or
 - (b) If a life and/or accident and health insurer, the insurer has Total Adjusted Capital which is greater than or equal to its Company Action Level RBC but less than the product of its Authorized Control Level RBC and 2.5 and has a negative trend;
 - (2) The notification by the Insurance Commissioner to the insurer of an Adjusted RBC Report that indicates an event in paragraph (1) of this subsection, provided the insurer does not challenge the Adjusted RBC Report under § 23-63-1308; or
 - (3) If, pursuant to § 23-63-1308, an insurer challenges an Adjusted RBC Report that indicates the event in paragraph (1) of this subsection, the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected

the insurer's challenge.

- B. In the event of a Company Action Level Event, the insurer shall prepare and submit to the commissioner an RBC Plan which shall:
 - (1) Identify the conditions which contribute to the Company Action Level Event;
 - (2) Contain proposals of corrective actions which the insurer intends to take and would be expected to result in the elimination of the Company Action Level Event;
 - (3) Provide projections of the insurer's financial results in the current year and at least the four (4) succeeding years, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including projections of statutory operating income, net income, capital and/or surplus. (The projections for both new and renewal business might include separate projections for each major line of business and separately identify each significant income, expense and benefit component.);
 - (4) Identify the key assumptions impacting the insurer's projections and the sensitivity of the projections to the assumptions; and
 - (5) Identify the quality of, and problems associated with, the insurer's business, including but not limited to its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business and use of reinsurance, if any, in each case.
- C. The RBC Plan shall be submitted:
 - (1) Within forty-five (45) days of the Company Action Level Event; or
 - (2) If the insurer challenges an Adjusted RBC Report pursuant to § 23-63-1308, within forty-five (45) days after notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.
- D. Within sixty (60) days after the submission by an insurer of an RBC Plan to the commissioner, the commissioner shall notify the insurer whether the RBC Plan shall be implemented or is, in the judgment of the commissioner, unsatisfactory. If the commissioner determines the RBC Plan is unsatisfactory, the notification to the insurer shall set forth the reasons for the determination, and may set forth proposed revisions which will render the RBC Plan satisfactory, in the judgment of the commissioner. Upon notification from the commissioner, the insurer shall prepare a Revised RBC Plan, which may incorporate by reference any revisions proposed by the commissioner, and shall submit the Revised RBC Plan to the commissioner:
 - (1) Within forty-five (45) days after the notification from the commissioner; or
 - (2) If the insurer challenges the notification from the commissioner under § 23-63-1308, within forty-five (45) days after a notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.
- E. In the event of a notification by the commissioner to an insurer that the insurer's RBC Plan or Revised RBC Plan is unsatisfactory, the commissioner may at the commissioner's discretion, subject to the insurer's right to a hearing under § 23-63-1308, specify in the notification that the notification constitutes a Regulatory Action Level Event.
- F. Every domestic insurer that files an RBC Plan or Revised RBC Plan with the commissioner shall file a copy of the RBC Plan or Revised RBC Plan with the

insurance commissioner in any state in which the insurer is authorized to do business if:

- (1) Such state has an RBC provision substantially similar to § 23-63-1309(A); and
- (2) The insurance commissioner of that state has notified the insurer of its request for the filing in writing, in which case the insurer shall file a copy of the RBC Plan or Revised RBC Plan in that state no later than the later of:
 - (a) Fifteen (15) days after the receipt of notice to file a copy of its RBC Plan or Revised RBC Plan with the state; or
 - (b) The date on which the RBC Plan or Revised RBC Plan is filed under §§ 23-63-1304(C) and 23-63-1304(D).

23-63-1305. Regulatory Action Level Event.

- A. "Regulatory Action Level Event" means, with respect to any insurer, any of the following events:
- (1) The filing of an RBC Report by the insurer which indicates that the insurer's Total Adjusted Capital is greater than or equal to its Authorized Control Level RBC but less than its Regulatory Action Level RBC;
 - (2) The notification by the Insurance Commissioner to an insurer of an Adjusted RBC Report that indicates the event in paragraph (1), provided the insurer does not challenge the Adjusted RBC Report under § 23-63-1308;
 - (3) If, pursuant to § 23-63-1308, the insurer challenges an Adjusted RBC Report that indicates the event in paragraph (1) of this subsection, the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge;
 - (4) The failure of the insurer to file an RBC Report by the filing date, unless the insurer has provided an explanation for such failure which is satisfactory to the commissioner and has cured the failure within ten (10) days after the filing date;
 - (5) The failure of the insurer to submit an RBC Plan to the commissioner within the time period set forth in § 23-63-1304(C);
 - (6) Notification by the commissioner to the insurer that:
 - (a) The RBC Plan or revised RBC Plan submitted by the insurer is, in the judgment of the commissioner, unsatisfactory; and
 - (b) Such notification constitutes a Regulatory Action Level Event with respect to the insurer, provided the insurer has not challenged the determination under § 23-63-1308;
 - (7) If, pursuant to § 23-63-1308, the insurer challenges a determination by the commissioner under paragraph (6), the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected such challenge;
 - (8) Notification by the commissioner to the insurer that the insurer has failed to adhere to its RBC Plan or Revised RBC Plan, but only if such failure has a substantial adverse effect on the ability of the insurer to eliminate the Company Action Level Event in accordance with its RBC Plan or Revised RBC Plan and the commissioner has so stated in the notification, provided the insurer has not challenged the determination under § 23-63-1308; or
 - (9) If, pursuant to § 23-63-1308, the insurer challenges a determination by the

- commissioner under paragraph (8), the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the challenge.
- B. In the event of a Regulatory Action Level Event the commissioner shall:
- (1) Require the insurer to prepare and submit an RBC Plan or, if applicable, a Revised RBC Plan;
 - (2) Perform such examination or analysis as the commissioner deems necessary of the assets, liabilities and operations of the insurer including a review of its RBC Plan or Revised RBC Plan; and
 - (3) Subsequent to the examination or analysis, issue a Corrective Order specifying such corrective actions as the commissioner shall determine are required.
- C. In determining corrective actions, the commissioner may take into account such factors as are deemed relevant with respect to the insurer based upon the commissioner's examination or analysis of the assets, liabilities and operations of the insurer, including, but not limited to, the results of any sensitivity tests undertaken pursuant to the RBC Instructions. The RBC Plan or Revised RBC Plan shall be submitted:
- (1) Within forty-five (45) days after the occurrence of the Regulatory Action Level Event;
 - (2) If the insurer challenges an Adjusted RBC Report pursuant to § 23-63-1308 and the challenge is not frivolous in the judgment of the commissioner within forty-five (45) days after the notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge; or
 - (3) If the insurer challenges a Revised RBC Plan pursuant to § 23-63-1308 and the challenge is not frivolous in the judgment of the commissioner, within forty-five (45) days after the notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.
- D. The commissioner may retain actuaries and investment experts and other consultants as may be necessary in the judgment of the commissioner to review the insurer's RBC Plan or Revised RBC Plan, examine or analyze the assets, liabilities and operations of the insurer and formulate the Corrective Order with respect to the insurer. The fees, costs and expenses relating to consultants shall be borne by the affected insurer or such other party as directed by the commissioner.

23-63-1306. Authorized Control Level Event.

- A. "Authorized Control Level Event" means any of the following events:
- (1) The filing of an RBC Report by the insurer which indicates that the insurer's Total Adjusted Capital is greater than or equal to its Mandatory Control Level RBC but less than its Authorized Control Level RBC;
 - (2) The notification by the Insurance Commissioner to the insurer of an Adjusted RBC Report that indicates the event in paragraph (1), provided the insurer does not challenge the Adjusted RBC Report under § 23-63-1308;
 - (3) If, pursuant to § 23-63-1308, the insurer challenges an Adjusted RBC Report that indicates the event in paragraph (1), notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge;

- (4) The failure of the insurer to respond, in a manner satisfactory to the commissioner, to a Corrective Order (provided the insurer has not challenged the Corrective Order under § 23-63-1308); or
 - (5) If the insurer has challenged a Corrective Order under § 23-63-1308 and the commissioner has, after a hearing, rejected the challenge or modified the Corrective Order, the failure of the insurer to respond, in a manner satisfactory to the commissioner, to the Corrective Order subsequent to rejection or modification by the commissioner.
- B. In the event of an Authorized Control Level Event with respect to an insurer, the commissioner shall:
 - (1) Take such actions as are required under § 23-63-1305 regarding an insurer with respect to which a Regulatory Action Level Event has occurred; or
 - (2) If the commissioner deems it to be in the best interests of the policyholders and creditors of the insurer and of the public, take such actions as are necessary to cause the insurer to be placed under regulatory control pursuant to § 23-68-101 et seq. In the event the commissioner takes such actions, the Authorized Control Level Event shall be deemed sufficient grounds for the commissioner to take action under § 23-68-101 et seq. and the commissioner shall have the rights, powers and duties with respect to the insurer as are set forth in § 23-68-101 et seq. In the event the commissioner takes actions under this paragraph pursuant to an Adjusted RBC Report, the insurer shall be entitled to such protections as are afforded to insurers under the provisions of § 23-68-101 et seq. pertaining to summary proceedings.

23-63-1307. Mandatory Control Level Event.

- A. "Mandatory Control Level Event" means any of the following events:
 - (1) The filing of an RBC Report which indicates that the insurer's Total Adjusted Capital is less than its Mandatory Control Level RBC;
 - (2) Notification by the Insurance Commissioner to the insurer of an Adjusted RBC Report that indicates the event in paragraph (1), provided the insurer does not challenge the Adjusted RBC Report under § 23-63-1308; or
 - (3) If, pursuant to § 23-63-1308, the insurer challenges an Adjusted RBC Report that indicates the event in paragraph (1), notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.
- B. In the event of a Mandatory Control Level Event:
 - (1) With respect to a life insurer, the commissioner shall take such actions as are necessary to place the insurer under regulatory control pursuant to § 23-68-101 et seq. In that event, the Mandatory Control Level Event shall be deemed sufficient grounds for the commissioner to take action under § 23-68-101 et seq., and the commissioner shall have the rights, powers and duties with respect to the insurer as are set forth in § 23-68-101 et seq. If the commissioner takes action pursuant to an Adjusted RBC Report, the insurer shall be entitled to the protections of § 23-68-101 et seq. pertaining to summary proceedings. Notwithstanding any of the foregoing, the commissioner may forego action for up to ninety (90) days after the Mandatory Control Level Event if the commissioner finds there is a reasonable

expectation that the Mandatory Control Level Event may be eliminated within the ninety (90) day period.

- (2) With respect to a property and casualty insurer, the commissioner shall take such actions as are necessary to place the insurer under regulatory control pursuant to § 23-68-101 et seq., or, in the case of an insurer which is writing no business and which is running-off its existing business, may allow the insurer to continue its run-off under the supervision of the commissioner. In either event, the Mandatory Control Level Event shall be deemed sufficient grounds for the commissioner to take action under § 23-68-101 et seq., and the commissioner shall have the rights, powers and duties with respect to the insurer as are set forth in § 23-68-101 et seq. If the commissioner takes action pursuant to an Adjusted RBC Report, the insurer shall be entitled to the protections of § 23-68-101 et seq. pertaining to summary proceedings. Notwithstanding any of the foregoing, the commissioner may forego action for up to ninety (90) days after the Mandatory Control Level Event if the commissioner finds there is a reasonable expectation that the Mandatory Control Level Event may be eliminated within the ninety (90) day period.

23-63-1308. Hearings.

Upon any of the following the insurer shall have the right to a confidential department hearing, on a record, at which the insurer may challenge any determination or action by the Insurance Commissioner. The insurer shall notify the commissioner of its request for a hearing within five (5) days after the notification by the commissioner under subsection A, B, C or D. Upon receipt of the insurer's request for a hearing, the commissioner shall set a date for the hearing, which date shall be no less than ten (10) nor more than thirty (30) days after the date of the insurer's request:

- A. Notification to an insurer by the commissioner of an Adjusted RBC Report; or
- B. Notification to an insurer by the commissioner that:
 1. The insurer's RBC Plan or Revised RBC Plan is unsatisfactory; and
 2. Such notification constitutes a Regulatory Action Level Event with respect to such insurer; or
- C. Notification to any insurer by the commissioner that the insurer has failed to adhere to its RBC Plan or Revised RBC Plan and that such failure has a substantial adverse effect on the ability of the insurer to eliminate the Company Action Level Event with respect to the insurer in accordance with its RBC Plan or Revised RBC Plan; or
- D. Notification to an insurer by the commissioner of a Corrective Order with respect to the insurer.

23-63-1309. Confidentiality - Prohibition on announcements, prohibition on use in ratemaking.

- A. All RBC Reports, to the extent the information therein is not required to be set forth in a publicly available annual statement schedule, and RBC Plans, including the results or report of any examination or analysis of an insurer performed pursuant hereto and any Corrective Order issued by the Insurance Commissioner pursuant to examination or analysis, with respect to any domestic insurer or foreign insurer which are filed with the commissioner constitute information that might be damaging to the

insurer if made available to its competitors, and therefore shall be kept confidential by the commissioner. This information shall not be made public and/or be subject to subpoena, other than by the commissioner and then only for the purpose of enforcement actions taken by the commissioner pursuant to this subchapter or any other provision of the insurance laws of this state.

- B. It is the judgment of the legislature that the comparison of an insurer's Total Adjusted Capital to any of its RBC Levels is a regulatory tool which may indicate the need for possible corrective action with respect to the insurer, and is not intended as a means to rank insurers generally. Therefore, except as otherwise required under the provisions of this subchapter, the making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly to be made, published, disseminated, circulated or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing an assertion, representation or statement with regard to the RBC Levels of any insurer, or of any component derived in the calculation, by any insurer, agent, broker or other person engaged in any manner in the insurance business would be misleading and is therefore prohibited; provided, however, that if any materially false statement with respect to the comparison regarding an insurer's Total Adjusted Capital to its RBC Levels or any of them or an inappropriate comparison of any other amount to the insurer's RBC Levels is published in any written publication and the insurer is able to demonstrate to the commissioner with substantial proof the falsity of such statement, or the inappropriateness, as the case may be, then the insurer may publish an announcement in a written publication if the sole purpose of the announcement is to rebut the materially false statement.
- C. It is the further judgment of the legislature that the RBC Instructions, RBC Reports, Adjusted RBC Reports, RBC Plans and Revised RBC Plans are intended solely for use by the commissioner in monitoring the solvency of insurers and the need for possible corrective action with respect to insurers and shall not be used by the commissioner for ratemaking nor considered or introduced as evidence in any rate proceeding nor used by the commissioner to calculate or derive any elements of an appropriate premium level or rate of return for any line of insurance which an insurer or any affiliate is authorized to write.

23-63-1310. Supplemental provisions - Rules - Exemption.

- A. The provisions of this subchapter are supplemental to any other provisions of the laws of this state, and shall not preclude or limit any other powers or duties of the Insurance Commissioner under such laws, including, but not limited to, § 23-68-101 et seq.
- B. The commissioner may adopt reasonable rules necessary for the implementation of this subchapter.
- C. The commissioner may exempt from the application of this subchapter any domestic insurer licensed to do business in this state which:
 - (1) Writes direct business only in this state; and

- (2) Writes direct annual premiums of \$2,000,000 or less; and
 - (3) Assumes no reinsurance in excess of five percent (5%) of direct premium written.
- D. The commissioner may exempt from the application of this subchapter any of the following entities:
- (1) Hospital and/or medical service corporations;
 - (2) Fraternal benefit societies; or
 - (3) Farmer's mutual aid associations.

23-63-1311. Foreign insurers.

- A. Any foreign insurer shall, upon the written request of the commissioner, submit to the Insurance Commissioner an RBC Report as of the end of the calendar year just ended the later of:
- (1) The date an RBC Report would be required to be filed by a domestic insurer under this subchapter; or
 - (2) Fifteen (15) days after the request is received by the foreign insurer. Any foreign insurer shall, at the written request of the commissioner, promptly submit to the commissioner a copy of any RBC Plan that is filed with the insurance commissioner of any other state.
- B. In the event of a Company Action Level Event, Regulatory Action Level Event or Authorized Control Level Event with respect to any foreign insurer as determined under the RBC statute applicable in the state of domicile of the insurer or, if no RBC statute is in force in that state, under the provisions of this subchapter, if the insurance commissioner of the state of domicile of the foreign insurer fails to require the foreign insurer to file an RBC Plan in the manner specified under that state's RBC statute or, if no RBC statute is in force in that state, under § 23-63-1304 hereof, the commissioner may require the foreign insurer to file an RBC Plan with the commissioner. In such event, the failure of the foreign insurer to file an RBC Plan with the commissioner shall be grounds to order the insurer to cease and desist from writing new insurance business in this state.
- C. In the event of a Mandatory Control Level Event with respect to any foreign insurer, if no domiciliary receiver has been appointed with respect to the foreign insurer under the rehabilitation and liquidation statute applicable in the state of domicile of the foreign insurer, the commissioner may make application to the Circuit Court of Pulaski County permitted under § 23-68-101 et seq. with respect to the liquidation of property of foreign insurers found in this state, and the occurrence of the Mandatory Control Level Event shall be considered adequate grounds for the application.

23-63-1312. Immunity.

There shall be no liability on the part of, and no cause of action shall arise against, the Insurance Commissioner or the State Insurance Department or its employees or agents for any action taken by them in the performance of their powers and duties under this subchapter.

23-63-1313. Rules and regulations.

The Insurance Commissioner may adopt reasonable rules and regulations for the implementation and administration of the provisions of this subchapter.

23-63-1314. Penalties and liabilities.

- (a) If the Insurance Commissioner finds after a hearing conducted in accordance with § 23-61-301 et seq. that any insurer or person has violated any provision of this subchapter, the commissioner may order:
 - (1) For each separate violation, a penalty in an amount of one thousand dollars (\$1,000.00) or, if the commissioner has found willful misconduct or willful violation, five thousand dollars (\$5,000.00); and
 - (2) Revocation or suspension of the insurer's or person's license.
- (b) The decision, determination or order of the commissioner pursuant to subsection (a) of this section shall be subject to judicial review pursuant to § 23-61-307.
- (c) Nothing contained in this section shall affect the right of the commissioner to impose any other penalties provided for in the insurance laws.

23-63-1315. Severability clause.

If any provision of this subchapter, or the application thereof to any person or circumstance, is held invalid, such determination shall not affect the provisions or applications of this subchapter which can be given effect without the invalid provision or application, and to that end the provisions of this subchapter are severable.

23-63-1316. Notices.

All notices by the Insurance Commissioner to an insurer which may result in regulatory action hereunder shall be effective upon dispatch if transmitted by registered or certified mail, or in the case of any other transmission shall be effective upon the insurer's receipt of such notice.

Subchapter 14.
Disclosure of Material Transactions.

23-63-1401. Short title.

This subchapter may be cited as the "Disclosure of Material Transactions Act".

23-63-1402. Report.

- A. Every insurer domiciled in this state shall file a report with the Insurance Commissioner disclosing material acquisitions and dispositions of assets or material nonrenewals, cancellations or revisions of ceded reinsurance agreements unless the acquisitions and dispositions of assets or material nonrenewals, cancellations or revisions of ceded reinsurance agreements have been submitted to the commissioner for review, approval or information purposes pursuant to other provisions of the Arkansas Insurance Code, laws, regulations, or other requirements.
- B. The report required in subsection A is due within fifteen (15) days after the end of the

calendar month in which any of the foregoing transactions occur.

- C. One complete copy of the report, including any exhibits or other attachments, shall be filed with:
 - (1) The insurance department of the insurer's state of domicile; and
 - (2) The National Association of Insurance Commissioners.
- D. All reports obtained by or disclosed to the commissioner pursuant to this subchapter, shall be given confidential treatment and shall not be subject to subpoena and shall not be made public by the commissioner, the National Association of Insurance Commissioners, or any other person, except to insurance departments of other states, without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer who would be affected notice and an opportunity to be heard, determines that the interest of policyholders, shareholders or the public will be served by publication, in which event the commissioner may publish all or any part in the manner the commissioner may deem appropriate.

23-63-1403. Acquisitions and dispositions of assets.

A. Materiality.

No acquisitions or dispositions of assets need be reported pursuant to § 23-63-1402 if the acquisitions or dispositions are not material. For purposes of this subchapter, a material acquisition or the aggregate of any series of related acquisitions during any thirty-day period, or disposition, or the aggregate of any series of related dispositions during any thirty-day period, is one that is non-recurring and not in the ordinary course of business and involves more than five percent (5%) of the reporting insurer's total admitted assets as reported in its most recent statutory statement filed with the insurance department of the insurer's state of domicile.

B. Scope.

- (1) Asset acquisitions subject to this subchapter include every purchase, lease, exchange, merger, consolidation, succession or other acquisition other than the construction or development of real property by or for the reporting insurer or the acquisition of materials for such purpose.
- (2) Asset dispositions subject to this subchapter include every sale, lease, exchange, merger, consolidation, mortgage, hypothecation, assignment, whether for the benefit of creditors or otherwise, abandonment, destruction or other disposition.

C. Information to be reported.

- (1) The following information is required to be disclosed in any report of a material acquisition or disposition of assets:
 - (a) Date of the transaction;
 - (b) Manner of acquisition or disposition;
 - (c) Description of the assets involved;
 - (d) Nature and amount of the consideration given or received;
 - (e) Purpose of, or reason for, the transaction;
 - (f) Manner by which the amount of consideration was determined;
 - (g) Gain or loss recognized or realized as a result of the transaction; and
 - (h) Name(s) of the person(s) from whom the assets were acquired or to whom

they were disposed.

- (2) Insurers are required to report material acquisitions and dispositions on a non-consolidated basis unless the insurer is part of a consolidated group of insurers which utilizes a pooling arrangement or 100 percent reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer ceded substantially all of its direct and assumed business to the pool. An insurer is deemed to have ceded substantially all of its direct and assumed business to a pool if the insurer has less than \$1,000,000 total direct plus assumed written premiums during a calendar year that are not subject to a pooling arrangement and the net income of the business not subject to the pooling arrangement represents less than five percent (5%) of the insurer's capital and surplus.

23-63-1404. Nonrenewals, cancellations or revisions of ceded reinsurance agreements.

A. Materiality and Scope.

1. No nonrenewals, cancellations or revisions of ceded reinsurance agreements need be reported pursuant to § 23-63-1402 if the nonrenewals, cancellations or revisions are not material. For purposes of this subchapter, a material nonrenewal, cancellation or revision is one that affects:
 - (a) As respects property and casualty business, including accident and health business written by a property and casualty insurer:
 - (i) More than fifty percent (50%) of the insurer's total ceded written premium; or
 - (ii) More than fifty percent (50%) of the insurer's total ceded indemnity and loss adjustment reserves;
 - (b) As respects life, annuity, and accident and health business: more than fifty percent (50%) of the total reserve credit taken for business ceded, on an annualized basis, as indicated in the insurer's most recent annual statement; and
 - (c) As respects either property and casualty or life, annuity, and accident and health business, either of the following events shall constitute a material revision which must be reported:
 - (i) An authorized reinsurer representing more than ten percent (10%) of a total cession is replaced by one or more unauthorized reinsurers; or
 - (ii) Previously established collateral requirements have been reduced or waived as respects one or more unauthorized reinsurers representing collectively more than ten percent (10%) of a total cession.
2. However, no filing shall be required if:
 - (a) As respects property and casualty business, including accident and health business written by a property and casualty insurer: the insurer's total ceded written premium represents, on an annualized basis, less than ten percent (10%) of its total written premium for direct and assumed business; or
 - (b) As respects life, annuity, and accident and health insurance: the total reserve taken for business ceded represents, on an annualized basis, less than ten percent (10%) of the statutory reserve requirement prior to any cession.

B. Information to be reported.

- (1) The following information is required to be disclosed in any report of a material nonrenewal, cancellation or revision of ceded reinsurance agreements:
 - (a) Effective date of the nonrenewal, cancellation or revision;
 - (b) The description of the transaction with an identification of the initiator thereof;
 - (c) Purpose of, or reason for, the transaction; and
 - (d) If applicable, the identity of the replacement reinsurers.
- (2) Insurers are required to report all material nonrenewals, cancellations or revisions of ceded reinsurance agreements on a non-consolidated basis unless the insurer is part of a consolidated group of insurers which utilizes a pooling arrangement or 100 percent reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer ceded substantially all of its direct and assumed business to the pool. An insurer is deemed to have ceded substantially all of its direct and assumed business to a pool if the insurer has less than \$1,000,000 total direct plus assumed written premiums during a calendar year that are not subject to a pooling arrangement and the net income of the business not subject to the pooling arrangement represents less than five percent (5%) of the insurer's capital and surplus.

23-63-1405. Rules and regulations.

The Insurance Commissioner may adopt reasonable rules and regulations for the implementation and administration of the provisions of this subchapter.

23-63-1406. Penalties and liabilities.

- (a) If the Insurance Commissioner finds after a hearing conducted in accordance with § 23-61-301 et seq. that any insurer or person has violated any provision of this subchapter, the commissioner may order:
 - (1) For each separate violation, a penalty in an amount of one thousand dollars (\$1,000.00) or, if the commissioner has found willful misconduct or willful violation, five thousand dollars (\$5,000.00); and
 - (2) Revocation or suspension of the insurer's or person's license.
- (b) The decision, determination, or order of the commissioner pursuant to subsection (a) of this section shall be subject to judicial review pursuant to § 23-61-307.
- (c) Nothing contained in this section shall affect the right of the commissioner to impose any other penalties provided for in the insurance laws.

Subchapter 15.
Risk-Based Capital Requirements for Health Maintenance
Organizations.

23-63-1501. Definitions.

As used in this subchapter, these terms shall have the following meanings:

- (1) "Adjusted RBC report" means an RBC report which has been adjusted by the Insurance Commissioner in accordance with § 23-63-1502(d);
- (2) "Corrective order" means an order issued by the commissioner specifying corrective actions which the commissioner has determined are required;
- (3) "Domestic health organization" means a health maintenance organization domiciled in this state, as established under § 23-76-107, or a hospital and medical service corporation as defined in § 23-75-101;
- (4) "Foreign health organization" means a health organization that is licensed to do business in this state but is not domiciled in this state;
- (5) "Health organization" means a health maintenance organization, hospital and medical service corporation, limited health service organization, dental or vision plan, hospital, or a medical and dental indemnity or service corporation. This definition does not include an organization that is licensed as either a life and health insurer or a property and casualty insurer and that is otherwise subject to either the life or property and casualty RBC requirements;
- (6) "NAIC" means the National Association of Insurance Commissioners;
- (7) "RBC instructions" means the RBC report including risk-based capital instructions adopted by the National Association of Insurance Commissioners, as these RBC instructions may be amended by the National Association of Insurance Commissioners from time to time in accordance with the procedures adopted by the National Association of Insurance Commissioners;
- (8) "RBC level" means a health organization's company action level RBC, regulatory action level RBC, authorized control level RBC, or mandatory control level RBC where:
 - (A) "Company action level RBC" means, with respect to any health organization, the product of 2.0 and its authorized control level RBC;
 - (B) "Regulatory action level RBC" means the product of 1.5 and its authorized control level RBC;
 - (C) "Authorized control level RBC" means the number determined under the risk-based capital formula in accordance with the RBC instructions; and
 - (D) "Mandatory control level RBC" means the product of .70 and the authorized control level RBC;
- (9) "RBC plan" means a comprehensive financial plan containing the elements specified in § 23-63-1503(b). If the commissioner rejects the RBC plan and it is revised by the health organization with or without the commissioner's recommendation, the plan shall be called the "revised RBC plan";
- (10) "RBC report" means the report required in § 23-63-1502; and
- (11) "Total adjusted capital" means the sum of:
 - (A) A health organization's statutory capital and surplus, i.e., net worth, as determined in accordance with the statutory accounting applicable to the annual financial statements required to be filed; and
 - (B) Such other items, if any, as the RBC instructions may provide.

23-63-1502. RBC reports.

- (a) On or prior to each March 1, the "filing date", a domestic health organization shall prepare and submit to the Insurance Commissioner a report of its RBC levels as of the end of the calendar year just ended, in a form and containing such information as is required by the RBC instructions. In addition, a domestic health organization shall file its RBC report:
 - (1) With the National Association of Insurance Commissioners in accordance with the RBC instructions; and
 - (2) With the insurance commissioner in any state in which the health organization is authorized to do business, if the insurance commissioner has notified the health organization of its request in writing, in which case the health organization shall file its RBC report not later than the later of:
 - (A) Fifteen (15) days from the receipt of notice to file its RBC report with that state; or
 - (B) The filing date.
- (b) A health organization's RBC shall be determined in accordance with the formula set forth in the RBC instructions. The formula shall take the following into account, and may adjust for the covariance between, determined in each case by applying the factors in the manner set forth in the RBC instructions:
 - (1) Asset risk;
 - (2) Credit risk;
 - (3) Underwriting risk; and
 - (4) All other business risks and such other relevant risks as are set forth in the RBC instructions.
- (c) An excess of capital, i.e., net worth, over the amount produced by the risk-based capital requirements contained in this subchapter and the formulas, schedules, and instructions referenced in this subchapter is desirable in the business of health insurance. Accordingly, health organizations should seek to maintain capital above the RBC levels required by this subchapter. Additional capital is used and useful in the insurance business and helps to secure a health organization against various risks inherent in, or affecting, the business of insurance and not accounted for or only partially measured by the risk-based capital requirements contained in this subchapter.
- (d) If a domestic health organization files an RBC report that in the judgment of the commissioner is inaccurate, then the commissioner shall adjust the RBC report to correct the inaccuracy and shall notify the health organization of the adjustment. The notice shall contain a statement of the reason for the adjustment. An RBC report as so adjusted is referred to as an "adjusted RBC report".

23-63-1503. Company action level event.

- (a) "Company action level event" means any of the following events:
 - (1) The filing of an RBC report by a health organization that indicates that the health organization's total adjusted capital is greater than or equal to its regulatory action level RBC but less than its company action level RBC;
 - (2) Notification by the Insurance Commissioner to the health organization of an

- adjusted RBC report that indicates an event in subdivision (a)(1) of this section, provided the health organization does not challenge the adjusted RBC report under § 23-63-1507; or
- (3) If, pursuant to § 23-63-1507, a health organization challenges an adjusted RBC report that indicates the event in subdivision (a)(1) of this section, the notification by the commissioner to the health organization that the commissioner has, after a hearing, rejected the health organization's challenge.
- (b) In the event of a company action level event, the health organization shall prepare and submit to the commissioner an RBC plan that shall:
- (1) Identify the conditions that contribute to the company action level event;
 - (2) Contain proposals of corrective actions that the health organization intends to take and that would be expected to result in the elimination of the company action level event;
 - (3) Provide projections of the health organization's financial results in the current year and at least the two (2) succeeding years, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including projections of statutory balance sheets, operating income, net income, capital and surplus, and RBC levels. The projections for both new and renewal business might include separate projections for each major line of business and separately identify each significant income, expense, and benefit component;
 - (4) Identify the key assumptions impacting the health organization's projections and the sensitivity of the projections to the assumptions; and
 - (5) Identify the quality of, and problems associated with, the health organization's business, including, but not limited to, its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business, and use of reinsurance, if any, in each case.
- (c) The RBC plan shall be submitted:
- (1) Within forty-five (45) days of the company action level event; or
 - (2) If the health organization challenges an adjusted RBC report pursuant to § 23-63-1507, within forty-five (45) days after notification to the health organization that the commissioner has, after a hearing, rejected the health organization's challenge.
- (d) Within sixty (60) days after the submission by a health organization of an RBC plan to the commissioner, the commissioner shall notify the health organization whether the RBC plan shall be implemented or is, in the judgment of the commissioner, unsatisfactory. If the commissioner determines the RBC plan is unsatisfactory, the notification to the health organization shall set forth the reasons for the determination, and may set forth proposed revisions which will render the RBC plan satisfactory, in the judgment of the commissioner. Upon notification from the commissioner, the health organization shall prepare a revised RBC plan, which may incorporate by reference any revisions proposed by the commissioner, and shall submit the revised RBC plan to the commissioner:
- (1) Within forty-five (45) days after the notification from the commissioner; or
 - (2) If the health organization challenges the notification from the commissioner under § 23-63-1507, within forty-five (45) days after a notification to the health organization that the commissioner has, after a hearing, rejected the health

organization's challenge.

- (e) In the event of a notification by the commissioner to a health organization that the health organization's RBC plan or revised RBC plan is unsatisfactory, the commissioner may at the commissioner's discretion, subject to the health organization's right to a hearing under § 23-63-1507, specify in the notification that the notification constitutes a regulatory action level event.
- (f) Every domestic health organization that files an RBC plan or revised RBC plan with the commissioner shall file a copy of the RBC plan or revised RBC plan with the insurance commissioner in any state in which the health organization is authorized to do business if:
 - (1) The state has an RBC provision substantially similar to § 23-63-1508(a); and
 - (2) The insurance commissioner of that state has notified the health organization of its request for the filing in writing, in which case the health organization shall file a copy of the RBC plan or revised RBC plan in that state no later than the later of:
 - (A) Fifteen (15) days after the receipt of notice to file a copy of its RBC plan or revised RBC plan with the state; or
 - (B) The date on which the RBC plan or revised RBC plan is filed under subsections (c) and (d) of this section.

23-63-1504. Regulatory action level event.

- (a) "Regulatory action level event" means, with respect to a health organization, any of the following events:
 - (1) The filing of an RBC report by the health organization that indicates that the health organization's total adjusted capital is greater than or equal to its authorized control level RBC but less than its regulatory action level RBC;
 - (2) Notification by the Insurance Commissioner to a health organization of an adjusted RBC report that indicates the event in subdivision (a)(1) of this section, provided the health organization does not challenge the adjusted RBC report under § 23-63-1507;
 - (3) If, pursuant to § 23-63-1507, the health organization challenges an adjusted RBC report that indicates the event in subdivision (a)(1) of this section, the notification by the commissioner to the health organization that the commissioner has, after a hearing, rejected the health organization's challenge;
 - (4) The failure of the health organization to file an RBC report by the filing date, unless the health organization has provided an explanation for the failure that is satisfactory to the commissioner and has cured the failure within ten (10) days after the filing date;
 - (5) The failure of the health organization to submit an RBC plan to the commissioner within the time period set forth in § 23-63-1503(c);
 - (6) Notification by the commissioner to the health organization that:
 - (A) The RBC plan or revised RBC plan submitted by the health organization is, in the judgment of the commissioner, unsatisfactory; and
 - (B) Notification constitutes a regulatory action level event with respect to the health organization, provided the health organization has not challenged the

determination under § 23-63-1507;

- (7) If, pursuant to § 23-63-1507, the health organization challenges a determination by the commissioner under subdivision (a)(6) of this section, the notification by the commissioner to the health organization that the commissioner has, after a hearing, rejected the challenge;
 - (8) Notification by the commissioner to the health organization that the health organization has failed to adhere to its RBC plan or revised RBC plan, but only if the failure has a substantial adverse effect on the ability of the health organization to eliminate the company action level event in accordance with its RBC plan or revised RBC plan and the commissioner has so stated in the notification, provided the health organization has not challenged the determination under § 23-63-1507; or
 - (9) If, pursuant to § 23-63-1507, the health organization challenges a determination by the commissioner under subdivision (a)(8) of this section, the notification by the commissioner to the health organization that the commissioner has, after a hearing, rejected the challenge.
- (b) In the event of a regulatory action level event the commissioner shall:
- (1) Require the health organization to prepare and submit an RBC plan or, if applicable, a revised RBC plan;
 - (2) Perform such examination or analysis as the commissioner deems necessary of the assets, liabilities, and operations of the health organization including a review of its RBC plan or revised RBC plan; and
 - (3) Subsequent to the examination or analysis, issue an order, a "corrective order", specifying such corrective actions as the commissioner shall determine are required.
- (c) In determining corrective actions, the commissioner may take into account factors the commissioner deems relevant with respect to the health organization based upon the commissioner's examination or analysis of the assets, liabilities, and operations of the health organization, including, but not limited to, the results of any sensitivity tests undertaken pursuant to the RBC instructions. The RBC plan or revised RBC plan shall be submitted:
- (1) Within forty-five (45) days after the occurrence of the regulatory action level event;
 - (2) If the health organization challenges an adjusted RBC report pursuant to § 23-63-1507 and the challenge is not frivolous in the judgment of the commissioner, within forty-five (45) days after the notification to the health organization that the commissioner has, after a hearing, rejected the health organization's challenge; or
 - (3) If the health organization challenges a revised RBC plan pursuant to § 23-63-1507 and the challenge is not frivolous in the judgment of the commissioner, within forty-five (45) days after the notification to the health organization that the commissioner has, after a hearing, rejected the health organization's challenge.
- (d) The commissioner may retain actuaries and investment experts and other consultants as may be necessary in the judgment of the commissioner to review the health organization's RBC plan or revised RBC plan, examine or analyze the assets, liabilities, and operations, including contractual relationships, of the health

organization and formulate the corrective order with respect to the health organization. The fees, costs, and expenses relating to consultants shall be borne by the affected health organization or such other party as directed by the commissioner.

23-63-1505. Authorized control level event.

- (a) "Authorized control level event" means any of the following events:
 - (1) The filing of an RBC report by the health organization that indicates that the health organization's total adjusted capital is greater than or equal to its mandatory control level RBC but less than its authorized control level RBC;
 - (2) The notification by the Insurance Commissioner to the health organization of an adjusted RBC report that indicates the event in subdivision (a)(1) of this section, provided the health organization does not challenge the adjusted RBC report under § 23-63-1507;
 - (3) If, pursuant to § 23-63-1507, the health organization challenges an adjusted RBC report that indicates the event in subdivision (a)(1) of this section, notification by the commissioner to the health organization that the commissioner has, after a hearing, rejected the health organization's challenge;
 - (4) The failure of the health organization to respond, in a manner satisfactory to the commissioner, to a corrective order, provided the health organization has not challenged the corrective order under § 23-63-1507; or
 - (5) If the health organization has challenged a corrective order under § 23-63-1507 and the commissioner has, after a hearing, rejected the challenge or modified the corrective order, the failure of the health organization to respond, in a manner satisfactory to the commissioner, to the corrective order subsequent to rejection or modification by the commissioner.
- (b) In the event of an authorized control level event with respect to a health organization, the commissioner shall:
 - (1) Take such actions as are required under § 23-63-1504 regarding a health organization with respect to which a regulatory action level event has occurred; or
 - (2) If the commissioner deems it to be in the best interests of the policyholders and creditors of the health organization and of the public, take such actions as are necessary to cause the health organization to be placed under regulatory control under rehabilitation and liquidation. In the event the commissioner takes such actions, the authorized control level event shall be deemed sufficient grounds for the commissioner to take action under rehabilitation and liquidation, and the commissioner shall have the rights, powers, and duties with respect to the health organization as are set forth in rehabilitation and liquidation. In the event the commissioner takes actions under this subdivision (b)(2) pursuant to an adjusted RBC report, the health organization shall be entitled to such protections as are afforded to health organizations under the provisions of rehabilitation and liquidation.

23-63-1506. Mandatory control level event.

- (a) "Mandatory control level event" means any of the following events:
 - (1) The filing of an RBC report which indicates that the health organization's total

- adjusted capital is less than its mandatory control level RBC;
- (2) Notification by the Insurance Commissioner to the health organization of an adjusted RBC report that indicates the event in subdivision (a)(1) of this section, provided the health organization does not challenge the adjusted RBC report under § 23-63-1507; or
 - (3) If, pursuant to § 23-63-1507, the health organization challenges an adjusted RBC report that indicates the event in subdivision (a)(1) of this section, notification by the commissioner to the health organization that the commissioner has, after a hearing, rejected the health organization's challenge.
- (b) In the event of a mandatory control level event, the commissioner shall take such actions as are necessary to place the health organization under regulatory control under rehabilitation and liquidation. In that event, the mandatory control level event shall be deemed sufficient grounds for the commissioner to take action under rehabilitation and liquidation, and the commissioner shall have the rights, powers, and duties with respect to the health organization as are set forth in rehabilitation and liquidation. Notwithstanding any of the foregoing provisions, the commissioner may forego action for up to ninety (90) days after the mandatory control level event if the commissioner finds there is a reasonable expectation that the mandatory control level event may be eliminated within the ninety-day period.

23-63-1507. Hearings.

Upon the occurrence of any of the following events the health organization shall have the right to a confidential departmental hearing, on a record, at which the health organization may challenge any determination or action by the Insurance Commissioner. The health organization shall notify the commissioner of its request for a hearing within five (5) days after the notification by the commissioner under subdivisions (1)-(4) of this section.

Upon receipt of the health organization's request for a hearing, the commissioner shall set a date for the hearing which shall be no less than ten (10) nor more than thirty (30) days after the date of the health organization's request. The events include:

- (1) Notification to a health organization by the commissioner of an adjusted RBC report;
- (2) Notification to a health organization by the commissioner that:
 - (A) The health organization's RBC plan or revised RBC plan is unsatisfactory; and
 - (B) Notification constitutes a regulatory action level event with respect to the health organization;
- (3) Notification to a health organization by the commissioner that the health organization has failed to adhere to its RBC plan or revised RBC plan and that the failure has a substantial adverse effect on the ability of the health organization to eliminate the company action level event with respect to the health organization in accordance with its RBC plan or revised RBC plan; or
- (4) Notification to a health organization by the commissioner of a corrective order with respect to the health organization.

23-63-1508. Confidentiality and prohibition on announcements - Prohibition

on use in ratemaking.

- (a) All RBC reports, to the extent the information is not required to be set forth in a publicly available annual statement schedule, and RBC plans, including the results or report of any examination or analysis of a health organization performed pursuant to this statute and any corrective order issued by the Insurance Commissioner pursuant to examination or analysis, with respect to a domestic health organization or foreign health organization that are filed with the commissioner constitute information that might be damaging to the health organization if made available to its competitors and therefore shall be kept confidential by the commissioner. This information shall not be made public or be subject to subpoena other than by the commissioner and then only for the purpose of enforcement actions taken by the commissioner pursuant to this subchapter or any other provision of the insurance laws of this state.
- (b)(1) It is the judgment of the General Assembly that the comparison of a health organization's total adjusted capital to any of its RBC levels is a regulatory tool which may indicate the need for corrective action with respect to the health organization, and is not intended as a means to rank health organizations generally. Therefore, except as otherwise required under the provisions of this subchapter, the making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over a radio or television station, or in any other way, of an advertisement, announcement, or statement containing an assertion, representation, or statement with regard to the RBC levels of any health organization, or of any component derived in the calculation, by any health organization, agent, broker, or other person engaged in any manner in the insurance business would be misleading and is therefore prohibited.
- (2) Provided, however, that if any materially false statement with respect to the comparison regarding a health organization's total adjusted capital to its RBC levels, or any of them, or an inappropriate comparison of any other amount to the health organization's RBC levels is published in any written publication and the health organization is able to demonstrate to the commissioner with substantial proof the falsity of the statement, or the inappropriateness, as the case may be, then the health organization may publish an announcement in a written publication if the sole purpose of the announcement is to rebut the materially false statement.
- (c) It is the further judgment of the General Assembly that the RBC instructions, RBC reports, adjusted RBC reports, RBC plans, and revised RBC plans are intended solely for use by the commissioner in monitoring the solvency of health organizations and the need for possible corrective action with respect to health organizations and shall not be used by the commissioner for ratemaking nor considered or introduced as evidence in any rate proceeding nor used by the commissioner to calculate or derive any elements of an appropriate premium level or rate of return for any line of insurance that a health organization or any affiliate is authorized to write.

23-63-1509. Supplemental provisions - Rules - Exemption.

- (a) The provisions of this subchapter are supplemental to any other provisions of the laws of this state, and shall not preclude or limit any other powers or duties of the Insurance Commissioner under such laws.
- (b) The commissioner may adopt reasonable rules necessary for the implementation of this subchapter.
- (c) The commissioner may exempt from the application of this subchapter a domestic health organization that:
 - (1)(A) Writes direct business only in this state;
 - (B) Assumes no reinsurance in excess of five percent (5%) of direct premium written; and
 - (C) Writes direct annual premiums for comprehensive medical business of two million dollars (\$2,000,000) or less; or
 - (2) Is a limited benefit health maintenance organization.

23-63-1510. Foreign health organizations.

- (a)(1) Upon the written request of the Insurance Commissioner, a foreign health organization shall submit to the commissioner an RBC report as of the end of the calendar year just ended which is the later of:
 - (A) The date an RBC report would be required to be filed by a domestic health organization under this subchapter; or
 - (B) Fifteen (15) days after the request is received by the foreign health organization.
- (2) At the written request of the commissioner, a foreign health organization shall promptly submit to the commissioner a copy of any RBC plan that is filed with the insurance commissioner of any other state.
- (b) In the event of a company action level event, regulatory action level event, or authorized control level event with respect to a foreign health organization as determined under the RBC statute applicable in the state of domicile of the health organization or, if no RBC statute is in force in that state, under the provisions of this subchapter, if the insurance commissioner of the state of domicile of the foreign health organization fails to require the foreign health organization to file an RBC plan in the manner specified under that state's RBC statute or, if no RBC statute is in force in that state, under § 23-63-1503 of this subchapter, the commissioner may require the foreign health organization to file an RBC plan with the commissioner. In such event, the failure of the foreign health organization to file an RBC plan with the commissioner shall be grounds to order the health organization to cease and desist from writing new insurance business in this state.
- (c) In the event of a mandatory control level event with respect to a foreign health organization, if no domiciliary receiver has been appointed with respect to the foreign health organization under the rehabilitation and liquidation statute applicable in the state of domicile of the foreign health organization, the commissioner may make application under rehabilitation and liquidation with respect to the liquidation of property of foreign health organizations found in this state, and the occurrence of the mandatory control level event shall be considered adequate grounds for the application.

23-63-1511. Immunity.

There shall be no liability on the part of, and no cause of action shall arise against, the Insurance Commissioner or the State Insurance Department or its employees or agents for any action taken by them in the performance of their powers and duties under this subchapter.

23-63-1512. Notices.

All notices by the Insurance Commissioner to a health organization that may result in regulatory action under this subchapter shall be effective upon dispatch if transmitted by registered or certified mail, or in the case of any other transmission shall be effective upon the health organization's receipt of notice.

Subchapter 16. Licensing and Regulation of Captive Insurers.

23-63-1601. Definitions.

As used in this subchapter, unless the context otherwise requires:

- (1) "Affiliated company" means a company in the same corporate system as a parent, an industrial insured, or a member organization by virtue of common ownership, control, operation, or management;
- (2) "Alien captive insurance company" means an insurance company formed to write insurance business for its parents and affiliates and licensed under the laws of an alien jurisdiction which imposes statutory or regulatory standards in a form acceptable to the Insurance Commissioner on companies transacting the business of insurance in the alien jurisdiction;
- (3) "Association" means a legal association of individuals, corporations, partnerships, or associations that has been in continuous existence for at least one (1) year:
 - (A) The member organizations of which collectively, or which does itself:
 - (i) Own, control, or hold with power to vote all of the outstanding voting securities of an association captive insurance company incorporated as a stock insurer; or
 - (ii) Have complete voting control over an association captive insurance company incorporated as a mutual insurer; or
 - (B) The member organizations of which collectively constitute all of the subscribers of an association captive insurance company formed as a reciprocal insurer;
- (4) "Association captive insurance company" means a company that insures risks of the member organizations of the association and their affiliated companies;
- (5) "Branch business" means any insurance business transacted by a branch captive insurance company in this state;
- (6)(A) "Branch captive insurance company" means an alien captive insurance company licensed by the commissioner to transact the business of insurance in

- this state through a business unit with a principal place of business in this state.
- (B) A branch captive insurance company must be a pure captive insurance company with respect to operations in this state, unless permitted by the commissioner;
- (7) "Branch operations" means any business operations of a branch captive insurance company in this state;
- (8) "Captive insurance company" means a producer reinsurance captive insurance company, pure captive insurance company, association captive insurance company, sponsored captive insurance company, or industrial insured captive insurance company formed or licensed under this subchapter;
- (9) "Commissioner" means the Insurance Commissioner of the State Insurance Department or the commissioner's designee;
- (10) "Controlled unaffiliated business" means a company:
- (A) That is not in the corporate system of a parent and affiliated companies;
- (B) That has an existing contractual relationship with a parent or affiliated company; and
- (C) Whose risks are managed by a pure captive insurance company;
- (11) "Department" means the State Insurance Department;
- (12)(A) "Industrial insured" means an insured:
- (i) Which procures insurance by use of the services of a full-time employee acting as a risk manager or insurance manager or utilizing the services of a regularly and continuously qualified insurance consultant;
- (ii) Whose aggregate annual premiums for insurance on all risks total at least twenty-five thousand dollars (\$25,000); and
- (iii) Which has at least twenty-five (25) full-time employees.
- (B) "Industrial insured" does not mean "industrial life insurance" as used in § 23-82-101 et seq.;
- (13)(A) "Industrial insured captive insurance company" means a company that insures risks of the industrial insureds that compose the industrial insured group and their affiliated companies.
- (B) "Industrial insured captive insurance company" does not encompass "industrial life insurance" as used in § 23-82-101 et seq.;
- (14)(A) "Industrial insured group" means a group that meets either of the following criteria:
- (i) A group of industrial insureds that collectively:
- (a) Own, control, or hold with power to vote all of the outstanding voting securities of an industrial insured captive insurance company incorporated as a stock insurer; or
- (b) Have complete voting control over an industrial insured captive insurance company incorporated as a mutual insurer; or
- (ii) A group which is created under the Product Liability Risk Retention Act of 1981, 15 U.S.C. §§ 3901 et seq., as it existed January 1, 2001, or the Risk Retention and Purchasing Groups Act, § 23-94-201 et seq., or as a corporation or other limited liability association taxable as a stock

insurance company or a mutual insurer under the Arkansas Insurance Code, § 23-60-101 et seq.

- (B) "Industrial insured group" does not encompass "industrial life insurance" as used in § 23-82-101 et seq.;
- (15) "Member organization" means an individual, corporation, partnership, or association that belongs to an association;
- (16) "Parent" means a corporation, partnership, or individual that directly or indirectly owns, controls, or holds with power to vote more than fifty percent (50%) of the outstanding voting securities of a pure captive insurance company;
- (17) "Participant" means an entity as defined in § 23-63-1621, and any affiliates of that entity, that are insured by a sponsored captive insurance company where the losses of the participant are limited through a participant contract to the assets of a protected cell;
- (18) "Participant contract" means a contract by which a sponsored captive insurance company insures the risks of a participant and limits the losses of the participant to the assets of a protected cell;
- (19) "Producer reinsurance captive insurance company" means a company that is wholly owned by a resident licensed insurance producer and that acts only as an assuming reinsurer in a retrocession of risks written by or placed through its parent or an affiliate of its parent;
- (20) "Protected cell" means a separate account established and maintained by a sponsored captive insurance company for one participant or by a producer reinsurance captive insurance company;
- (21) "Pure captive insurance company" means a company that insures risks of its parent and affiliated companies or controlled unaffiliated business;
- (22) "Retrocession" means a transaction whereby an accredited reinsurer under §§ 23-62-305 - 23-62-308 or an authorized insurer cedes to another reinsurer all or part of the reinsurance it has previously assumed;
- (23) "Sponsor" means an entity that meets the requirements of § 23-63-1620 and is approved by the commissioner to provide all or part of the capital and surplus required by applicable law and to organize and operate a sponsored captive insurance company; and
- (24) "Sponsored captive insurance company" means a captive insurance company:
- (A) In which the minimum capital and surplus required is provided by one (1) or more sponsors;
 - (B) That is formed or licensed under this subchapter;
 - (C) That insures the risks of separate participants through the contract; and
 - (D) That segregates each participant's liability through one (1) or more protected cells.

23-63-1602. Application for license.

- (a) A captive insurance company, when permitted by its articles of incorporation or charter, may apply to the Insurance Commissioner for a license to do any and all insurance, including workers' compensation insurance, authorized by the Arkansas

Insurance Code. However:

- (1) A pure captive insurance company may not insure any risks other than those of its parent and affiliated companies or controlled unaffiliated business;
 - (2) An association captive insurance company may not insure any risks other than those of the member organizations of its association and their affiliated companies;
 - (3) An industrial insured captive insurance company may not insure any risks other than those of the industrial insureds that compose the industrial insured group and their affiliated companies;
 - (4) A captive insurance company may not provide personal motor vehicle or homeowner's insurance coverage or any component of these coverages;
 - (5) A captive insurance company may not accept or cede reinsurance except as authorized by § 23-63-1611; and
 - (6) A producer reinsurance captive insurance company may not accept retrocession of any risks other than those written by or placed through its parent or affiliated licensed insurance producer and written by authorized insurers.
- (b) To conduct insurance business in this state, a captive insurance company shall:
- (1) Obtain from the commissioner a license authorizing it to conduct insurance business in this state;
 - (2) Hold at least one (1) board of directors meeting, or in the case of a reciprocal insurer, a subscriber's advisory committee meeting, each year in this state;
 - (3) Maintain its principal place of business in this state, or in the case of a branch captive insurance company, maintain the principal place of business for its branch operations in this state; and
 - (4)(A) Appoint a resident registered agent to accept service of process and to act on its behalf in this state.
- (B) In the case of a captive insurance company:
- (i) Formed as a corporation, the commissioner must be an agent of the captive insurance company upon whom any process, notice, or demand may be served whenever the registered agent cannot, with reasonable diligence, be found at the registered office of the captive insurance company;
 - (ii) Formed as a reciprocal insurer, the commissioner must be an agent of the captive insurance company upon whom any process, notice, or demand may be served whenever the registered agent cannot, with reasonable diligence, be found at the registered office of the captive insurance company.
- (c)(1) Before receiving a license, a captive insurance company:
- (A) Formed as a corporation shall file with the commissioner:
 - (i) A certified copy of its charter and bylaws;
 - (ii) A statement under oath of its president and secretary showing its financial condition; and
 - (iii) Any other statements or documents required by the commissioner;
 - (B) Formed as a reciprocal shall file with the commissioner:
 - (i) A certified copy of the power of attorney of its attorney in fact;

- (ii) A certified copy of its subscribers' agreement;
 - (iii) A statement under oath of its attorney in fact showing its financial condition; and
 - (iv) Any other statements or documents required by the commissioner; or
- (C)(i) Formed as a reciprocal shall obtain the commissioner's approval of its coverages, deductibles, coverage limits, and rates.
 - (ii) If there is a subsequent material change in an item in the description, the reciprocal captive insurance company shall submit to the commissioner for approval an appropriate revision and may not offer any additional kinds of insurance until a revision of the description is approved by the commissioner.
 - (iii) The reciprocal captive insurance company shall inform the commissioner of any material change in rates within thirty (30) days of the adoption of the change.
- (2) In addition to the information required by subdivision (c)(1) of this section, an applicant captive insurance company shall file with the commissioner evidence of:
 - (A) The amount and liquidity of its assets relative to the risks to be assumed;
 - (B) The adequacy of the expertise, experience, and character of the person or persons who will manage it;
 - (C) The overall soundness of its plan of operation;
 - (D) The adequacy of the loss-prevention programs of its parent, member organizations, or industrial insureds, as applicable; and
 - (E) Other factors considered relevant by the commissioner in ascertaining whether the proposed captive insurance company will be able to meet its policy obligations.
- (3) In addition to the information required by subdivisions (c)(1) and (2) of this section, an applicant producer reinsurance captive insurance company or a sponsored captive insurance company shall file with the commissioner:
 - (A) A business plan demonstrating how the applicant will account for the loss and expense experience of each protected cell at a level of detail found to be sufficient by the commissioner, and how it will report the experience to the commissioner;
 - (B) A statement acknowledging that all financial records of the captive insurance company, including records pertaining to any protected cells, must be made available for inspection or examination by the commissioner; and
 - (C) Evidence that expenses will be allocated to each protected cell in an equitable manner.
- (4) In addition to the information required by subdivisions (c)(1)-(3) of this section, an applicant-sponsored captive insurance company shall file with the commissioner all contracts between the sponsored captive insurance company and any participants.
- (5) Information submitted under this subsection is confidential and may not be made public by the commissioner or an agent or employee of the commissioner without

the written consent of the company, except that:

- (A) Information may be discoverable by a party in a civil action or contested case to which the captive insurance company that submitted the information is a party, upon a showing by the party seeking to discover the information that:
 - (i) The information sought is relevant to and necessary for the furtherance of the action or case;
 - (ii) The information sought is unavailable from other nonconfidential sources; and
 - (iii) A subpoena issued by a judicial or administrative officer of competent jurisdiction has been submitted to the commissioner. However, subdivision (c)(4) of this section does not apply to an industrial insured captive insurance company insuring the risks of an industrial insured group; and
- (B) The commissioner may disclose the information to a public officer having jurisdiction over the regulation of insurance in another state if:
 - (i) The public official agrees in writing to maintain the confidentiality of the information; and
 - (ii) The laws of the state in which the public official serves require the information to be confidential.
- (d)(1) A captive insurance company shall pay to the State Insurance Department Trust Fund a nonrefundable fee in an amount and manner to be prescribed by regulation.
- (2) The commissioner may retain legal, financial, and examination services from outside the department, the reasonable cost of which may be charged against the applicant.
- (3) Section 23-61-208 applies to examinations, investigations, and processing conducted under the authority of this section.
- (4) In addition, a captive insurance company shall pay to the fund a license fee for the year of registration and a renewal fee in an amount and manner to be prescribed by regulation.
- (e) If the commissioner is satisfied that the documents and statements filed by the captive insurance company comply with this subchapter, the commissioner may grant a license authorizing the company to do insurance business in this state until March 1, at which time the license may be renewed.

23-63-1603. Similar names.

A captive insurance company may not adopt a name that is the same as, deceptively similar to, or likely to be confused with or mistaken for, any other existing business name registered in this state.

23-63-1604. Capital requirements.

- (a)(1) The Insurance Commissioner may not issue a license to a producer reinsurance captive insurance company, pure captive insurance company, sponsored captive insurance company, association captive insurance company incorporated as a stock insurer, or industrial insured captive insurance company incorporated as a stock

insurer, unless the company possesses and maintains unimpaired paid-in capital of:

- (A) In the case of a producer reinsurance captive insurance company or a pure captive insurance company, not less than one hundred thousand dollars (\$100,000);
 - (B) In the case of an association captive insurance company incorporated as a stock insurer, not less than four hundred thousand dollars (\$400,000);
 - (C) In the case of an industrial insured captive insurance company incorporated as a stock insurer, not less than two hundred thousand dollars (\$200,000); or
 - (D) In the case of a sponsored captive insurance company, not less than five hundred thousand dollars (\$500,000).
- (2) The capital may be in the form of cash or an irrevocable letter of credit issued by a bank chartered by this state or a member bank of the Federal Reserve System and approved by the commissioner.
- (b)(1) The commissioner may prescribe additional capital based upon the type, volume, and nature of insurance business transacted.
- (2) This capital may be in the form of an irrevocable letter of credit issued by a bank chartered by this state or a member bank of the Federal Reserve System.
- (c)(1) In the case of a branch captive insurance company, as security for the payment of liabilities attributable to branch operations, the commissioner shall require that a trust fund, funded by an irrevocable letter of credit or other acceptable asset, be established and maintained in the United States for the benefit of United States policyholders and United States ceding insurers under insurance policies issued or reinsurance contracts issued or assumed by the branch captive insurance company through its branch operations.
- (2)(A) The amount of the security may be no less than the capital and surplus required by this subchapter and the reserves on these insurance policies or reinsurance contracts, including reserves for losses, allocated loss adjustment expenses, incurred but not reported losses and unearned premiums with regard to business written through branch operations.
- (B)(i) The commissioner may permit a branch captive insurance company that is required to post security for loss reserves on branch business by its reinsurer to reduce the funds in the trust account required by this section by the same amount so long as the security remains posted with the reinsurer.
- (ii) If the form of security selected is a letter of credit, the letter of credit must be established, issued, or confirmed by a bank chartered in this state or a member bank of the Federal Reserve System.
- (d)(1) A captive insurance company may not pay a dividend out of, or other distribution with respect to, capital or surplus, in excess of the limitations set forth in § 23-63-515, without the prior approval of the commissioner.
- (2) Approval of an ongoing plan for the payment of dividends or other distributions must be conditioned upon the retention, at the time of each payment, of capital or surplus in excess of amounts specified by or determined in accordance with formulas approved by the commissioner.
- (3) Subsection (d) of this section shall not apply to producer reinsurance captive insurance companies.

23-63-1605. Surplus requirements.

- (a)(1) The Insurance Commissioner may not issue a license to a captive insurance company, unless the company possesses and maintains free surplus of:
 - (A) In the case of a producer reinsurance captive insurance company, not less than one hundred thousand dollars (\$100,000);
 - (B) In the case of a pure captive insurance company, not less than one hundred fifty thousand dollars (\$150,000);
 - (C) In the case of an association captive insurance company incorporated as a stock insurer, not less than three hundred fifty thousand dollars (\$350,000);
 - (D) In the case of an industrial insured captive insurance company incorporated as a stock insurer, not less than three hundred thousand dollars (\$300,000);
 - (E) In the case of an association captive insurance company incorporated as a mutual insurer, not less than seven hundred fifty thousand dollars (\$750,000);
 - (F) In the case of an industrial insured captive insurance company incorporated as a mutual insurer, not less than five hundred thousand dollars (\$500,000); and
 - (G) In the case of a sponsored captive insurance company, not less than five hundred thousand dollars (\$500,000).
- (2) The surplus may be in the form of cash or an irrevocable letter of credit:
 - (A) Issued by a bank chartered by this state or a member bank of the Federal Reserve System; and
 - (B) Approved by the commissioner.
- (b) Notwithstanding the requirements of subsection (a) of this section, a captive insurance company organized as a reciprocal insurer under this subchapter may not be issued a license, unless it possesses and maintains a free surplus of one million dollars (\$1,000,000).
- (c)(1) The commissioner may prescribe additional surplus based upon the type, volume, and nature of insurance business transacted.
- (2) This capital may be in the form of an irrevocable letter of credit issued by a bank chartered by this state or a member bank of the Federal Reserve System.
- (d)(1) A captive insurance company may not pay a dividend out of, or other distribution with respect to, capital or surplus in excess of the limitations set forth in § 23-63-515, without the prior approval of the commissioner.
- (2) Approval of an ongoing plan for the payment of dividends or other distribution must be conditioned upon the retention at the time of each payment of capital or surplus in excess of amounts specified by or determined in accordance with formulas approved by the commissioner.
- (3) Subsection (d) of this section shall not apply to a producer reinsurance captive insurance company.

23-63-1606. Organization.

- (a) A producer reinsurance captive insurance company, pure captive insurance company, or a sponsored captive insurance company must be incorporated as a stock

insurer with its capital divided into shares and held by the stockholders.

- (b) An association captive insurance company or an industrial insured captive insurance company may be:
 - (1) Incorporated as a stock insurer with its capital divided into shares and held by the stockholders;
 - (2) Incorporated as a mutual insurer without capital stock, the governing body of which is elected by the member organizations of its association; or
 - (3) Organized as a reciprocal insurer under § 23-70-101 et seq.
- (c) A captive insurance company may not have fewer than three (3) incorporators of whom not fewer than two (2) must be residents of this state.
- (d) Before the articles of incorporation of a captive insurance company formed as a corporation are transmitted to the Insurance Commissioner, the incorporators shall petition the commissioner to issue a certificate setting forth a finding that the establishment and maintenance of the proposed corporation will promote the general good of the state. In arriving at this finding, the commissioner shall consider:
 - (1) The character, reputation, financial standing, and purposes of the incorporators;
 - (2) The character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors; and
 - (3) Other aspects as the commissioner considers advisable.
- (e) The articles of incorporation, the certificate issued under subsection (d) of this section, and the organization fees required by § 23-63-1602(d), must be transmitted to the commissioner, who shall record both the articles of incorporation and the certificate.
- (f) The organizers of a captive insurance company formed as a reciprocal insurer shall petition the commissioner to issue a certificate setting forth the commissioner's finding that the establishment and maintenance of the proposed association will promote the general good of the state. In arriving at this finding the commissioner shall consider:
 - (1) The character, reputation, financial standing, and purposes of the organizers;
 - (2) The character, reputation, financial responsibility, insurance experience, and business qualifications of the attorney in fact; and
 - (3) Other aspects the commissioner considers advisable.
- (g)(1) The alien captive insurance company of a captive insurance company licensed as a branch captive insurance company shall petition the commissioner to issue a certificate setting forth the commissioner's finding that, after considering the character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors of the alien captive insurance company, the licensing and maintenance of the branch operations will promote the general good of the state.
 - (2) The alien captive insurance company may register to do business in this state after the commissioner's certificate has been issued.
- (h) The capital stock of a captive insurance company incorporated as a stock insurer must be issued at not less than par value.
- (i) At least one (1) of the members of the board of directors of a captive insurance

company formed as a corporation in this state must be a resident of this state.

- (j) At least one (1) of the members of the subscribers' advisory committee of a captive insurance company formed as a reciprocal insurer must be a resident of this state.
- (k)(1) A captive insurance company formed as a corporation under this subchapter has the privileges of and is subject to the general corporation law of this state and applicable provisions of this subchapter.
 - (2) If a conflict occurs between general corporation law and this subchapter, the latter controls.
 - (3)(A) The Arkansas Insurance Code concerning mergers, consolidations, conversions, mutualizations, and redomestications apply in determining the procedures to be followed by a captive insurance company in carrying out any of those transactions.
 - (B) The commissioner may waive or modify the requirements for public notice and hearing in accordance with regulations which the commissioner may promulgate addressing categories of transactions.
 - (C) If a notice of public hearing is required but no one requests a hearing, the commissioner may cancel the hearing.
- (l)(1)(A) A captive insurance company formed as a reciprocal insurer under this subchapter is subject to § 23-70-101 et seq. and applicable provisions of this subchapter.
 - (B) If a conflict occurs between § 23-70-101 et seq. and this subchapter, the latter controls.
 - (C) To the extent a reciprocal insurer is made subject to the Arkansas Insurance Code, § 23-60-101 et seq., under § 23-70-101 et seq., the Arkansas Insurance Code, is not applicable to a reciprocal insurer formed under this subchapter, unless expressly made applicable to a captive insurance company by this subchapter.
- (2) In addition to subdivision (l)(1) of this section, a captive insurance company organized as a reciprocal insurer that is an industrial insured group is subject to § 23-70-101 et seq. and applicable provisions of the Arkansas Insurance Code.
- (m) The articles of incorporation or bylaws of a captive insurance company may authorize a quorum of a board of directors to consist of no fewer than one-third (1/3) of the fixed or prescribed number of directors under § 4-27-824(B).
- (n) The subscribers' agreement or other organizing document of a captive insurance company formed as a reciprocal insurer may authorize a quorum of a subscribers' advisory committee to consist of no fewer than one-third (1/3) of the number of its members.

23-63-1607. Reporting.

- (a) A captive insurance company shall not be required to make an annual report, except as provided for under this subchapter.
- (b)(1) Before March 1 of each year, a captive insurance company shall submit to the Insurance Commissioner a report of its financial condition, verified by oath of two (2) of its executive officers.

- (2)(A) Except as provided in §§ 23-63-1604 and 23-63-1605, a captive insurance company shall report using generally accepted accounting principles, unless the commissioner approves the use of statutory accounting principles.
 - (B) The commissioner may require, approve, or accept necessary modifications or adaptations for the type of insurance and kinds of insurers to be reported upon, supplemented by additional information.
 - (3)(A) Unless provided otherwise, an association captive insurance company and an industrial insured group shall file its report in the form required by § 23-63-216(a), and each industrial insured group shall comply with the requirements set forth in § 23-63-216(h).
 - (B) The commissioner shall prescribe by regulation the forms in which producer reinsurance captive insurance companies, pure captive insurance companies, and industrial insured captive insurance companies shall report.
- (c) A producer reinsurance captive insurance company or a pure captive insurance company may apply to file the required report on a fiscal year-end that is consistent with the parent company's fiscal year. If an alternative reporting date is granted:
- (1) The annual report is due sixty (60) days after the fiscal year-end; and
 - (2) In order to provide sufficient detail to support the premium tax return, the pure captive insurance company shall file before March 1 of each year for each calendar year-end pages one (1), two (2), three (3), and five (5) of the "Captive Annual Statement: Pure or Industrial Insured", verified by oath of two (2) of its executive officers.
- (d)(1) Sixty (60) days after the fiscal year-end, a branch captive insurance company shall file with the commissioner a copy of all reports and statements required to be filed under the laws of the jurisdiction in which the alien captive insurance company is formed, verified by oath by two (2) of its executive officers.
- (2)(A) If the commissioner is satisfied that the annual report filed by the alien captive insurance company in its domiciliary jurisdiction provides adequate information concerning the financial condition of the alien captive insurance company, the commissioner may waive the requirement for completion of the captive annual statement for business written in the alien jurisdiction.
 - (B) The waiver must be in writing and subject to public inspection.

23-63-1608. Examinations.

- (a)(1) At least one (1) time every three (3) years, or whenever the Insurance Commissioner determines it to be prudent, the commissioner or a person appointed by the commissioner shall visit each captive insurance company and thoroughly inspect and examine its affairs to ascertain its financial condition, its ability to fulfill its obligations, and whether it has complied with this subchapter.
- (2) Upon application, the commissioner may enlarge the three-year period to a five-year period, if a captive insurance company is subject during that period to a comprehensive annual audit by independent auditors approved by the commissioner of a scope satisfactory to the commissioner.
- (3) The expenses and charges of the examination must be paid to the state by the company or companies examined, in accordance with the Arkansas Insurance

Code.

- (b)(1) All examination reports, preliminary examination reports or results, working papers, recorded information, and documents and copies of documents produced by, obtained by, or disclosed to the commissioner or any other person in the course of an examination made under this section, are confidential and are not subject to subpoena and may not be made public by the commissioner or an employee or agent of the commissioner without the written consent of the company, except to the extent provided in this subsection.
- (2) Nothing in this subsection prevents the commissioner from using this information in furtherance of the commissioner's regulatory authority under the Arkansas Insurance Code.
- (3) The commissioner may grant access to this information under § 23-61-107 or to public officers having jurisdiction over the regulation of insurance in any other state or country or to law enforcement officers of this state or any other state or agency of the federal government at any time, so long as the officers receiving the information agree in writing to hold it in a manner consistent with this section.
- (c)(1)(A) This section applies to all business written by a captive insurance company.
- (B) The examination for a branch captive insurance company must be of branch business and branch operations only, as long as the branch captive insurance company:
 - (i) Provides annually to the commissioner a certificate of compliance or its equivalent issued by or filed with the licensing authority of the jurisdiction in which the branch captive insurance company is formed; and
 - (ii) Demonstrates to the commissioner's satisfaction that it is operating in sound financial condition in accordance with all applicable laws and regulations of that jurisdiction.
- (2) As a condition of licensure, the alien captive insurance company shall grant authority to the commissioner for examination of the affairs of the alien captive insurance company in the jurisdiction in which the alien captive insurance company is formed.
- (d) To the extent that § 23-61-201 et seq. does not contradict this section, § 23-61-201 et seq. applies to captive insurance companies licensed under this subchapter.

23-63-1609. Suspension and revocation.

- (a) The license of a captive insurance company to conduct an insurance business in this state may be penalized, suspended, or revoked by the Insurance Commissioner for:
 - (1) Insolvency or impairment of capital or surplus;
 - (2) Failure to meet the requirements of §§ 23-63-1604 and 23-63-1605;
 - (3) Refusal or failure to submit an annual report, as required by § 23-63-1607, or any other report or statement required by law or by lawful order of the commissioner;
 - (4) Failure to comply with its own charter, bylaws, or other organizational document;
 - (5) Failure to submit to examination or any legal obligation relative to an examination, as required by § 23-63-1608;
 - (6) Refusal or failure to pay the cost of examination as required by § 23-63-1608;

- (7) Use of methods that, although not specifically prohibited by law, render its operation detrimental or its condition unsound with respect to the public or to its policyholders; or
- (8) Failure to comply with the laws of this state.
- (b) If upon examination, hearing, or other evidence the commissioner finds that a captive insurance company has committed any of the acts specified in subsection (a) of this section, the commissioner may penalize, suspend, or revoke the license if the commissioner considers it in the best interest of the public and the policyholders of the captive insurance company.

23-63-1610. Investments.

- (a)(1) Except as provided in § 23-63-1614, an association captive insurance company, a producer reinsurance captive insurance company, a sponsored captive insurance company, and an industrial insured group shall comply with the investment requirements contained in the Arkansas Insurance Code.
- (2) The Insurance Commissioner may approve the use of alternative reliable methods of valuation and rating.
- (b)(1) A pure captive insurance company or industrial insured captive insurance company is not subject to any restrictions on allowable investments contained in the Arkansas Insurance Code.
- (2) The commissioner may prohibit or limit an investment that threatens the solvency or liquidity of the company.
- (c)(1) Only a pure captive insurance company may make loans to its parent company or affiliates, with the prior written approval of the commissioner and evidenced by a note in a form approved by the commissioner.
- (2) Loans of minimum capital and surplus funds required by §§ 23-63-1604(a) and 23-63-1605(a) are prohibited.

23-63-1611. Reinsurance.

- (a) A captive insurance company may provide reinsurance under the Arkansas Insurance Code, on risks ceded by any other insurer.
- (b)(1) A captive insurance company may take credit for reserves on risks or portions of risks ceded to reinsurers complying with the Arkansas Insurance Code.
- (2) A captive insurer may not take credit for reserves on risks or portions of risks ceded to a reinsurer if the reinsurer is not in compliance with the Arkansas Insurance Code.

23-63-1612. Rating organizations.

A captive insurance company may not be required to join a rating organization.

23-63-1613. Pools, plans, associations, and guaranty or insolvency funds.

- (a) A captive insurance company, including a captive insurance company organized as a reciprocal insurer under this subchapter, shall not join or contribute financially to a plan, pool, association, or guaranty or insolvency fund in this state.

- (b) A captive insurance company, its insured, its parent, any affiliated company, any member organization of its association or, in the case of a captive insurance company organized as a reciprocal insurer, a subscriber of the company shall not receive a benefit from a plan, pool, association, or guaranty or insolvency fund for claims arising out of the operations of the captive insurance company.

23-63-1614. Premium tax.

- (a) Except as provided in this section, a captive insurance company shall pay to the Insurance Commissioner by March 1 of each year, a tax at the rate of:
- (1) Four-tenths of one percent (0.4%) on the first twenty million dollars (\$20,000,000);
 - (2) Three-tenths of one percent (0.3%) on the next twenty million dollars (\$20,000,000);
 - (3) Two-tenths of one percent (0.2%) on the next twenty million dollars (\$20,000,000); and
 - (4) Seventy-five thousandths of one percent (.075%) on each dollar thereafter, on the direct premiums collected or contracted for on policies or contracts of insurance written by the captive insurance company during the year ending December 31 next preceding, after deducting from the direct premiums subject to the tax the amounts paid to policyholders as return premiums, which shall include dividends on unabsorbed premiums or premium deposits returned or credited to policyholders.
- (b)(1) Except as provided in this section, a captive insurance company shall pay to the commissioner by March 1 of each year, a tax at the rate of:
- (A) Two hundred and twenty-five thousandths of one percent (.225%) on the first twenty million dollars (\$20,000,000) of assumed reinsurance premium;
 - (B) One hundred fifty thousandths of one percent (.150%) on the next twenty million dollars (\$20,000,000);
 - (C) Fifty thousandths of one percent (.050%) on the next twenty million dollars (\$20,000,000); and
 - (D) Twenty-five thousandths of one percent (.025%) of each dollar thereafter.
- (2) No reinsurance tax applies to premiums for risks or portions of risks which are subject to taxation on a direct basis under subsection (a) of this section.
- (3) A premium tax is not payable in connection with the receipt of assets in exchange for the assumption of loss reserves and other liabilities of another insurer under common ownership and control, if the transaction is part of a plan to discontinue the operations of the other insurer and if the intent of the parties to the transaction is to renew or maintain business with the captive insurance company.
- (c) If the aggregate taxes to be paid by a captive insurance company calculated under subsections (a) and (b) of this section amount to less than five thousand dollars (\$5,000) in any year, the captive insurance company shall pay a tax of five thousand dollars (\$5,000) for that year.
- (d) A captive insurance company failing to make returns or to pay all taxes required by this section is subject to relevant sanctions under the Arkansas Insurance Code.

- (e) Two (2) or more captive insurance companies under common ownership and control must be taxed as though they were a single captive insurance company.
- (f) As used in this section, "common ownership and control" means:
 - (1) In the case of stock corporations, the direct or indirect ownership of eighty percent (80%) or more of the outstanding voting stock of two (2) or more corporations by the same shareholder or shareholders; and
 - (2) In the case of mutual corporations, the direct or indirect ownership of eighty percent (80%) or more of the surplus and the voting power of two (2) or more corporations by the same member or members.
- (g) In the case of a branch captive insurance company, the tax under this section applies only to the branch business of the company.
- (h)(1) The tax under this section constitutes all taxes collectible under the laws of this state from a captive insurance company.
 - (2) No other tax may be levied or collected from a captive insurance company by this state or a county, city, or municipality of this state, except ad valorem taxes on real and personal property used in the production of income.
- (i) This section shall not apply to any producer reinsurance captive insurance company that invests and continuously maintains not less than fifty percent (50%) of its assets in bonds, notes, warrants, or other securities, not in default, which are direct obligations of:
 - (1) This state;
 - (2) Any county, incorporated city or town, or duly organized school district or other taxing district of this state, if no default on the part of the obligor in payment of principal or interest on any of its obligations has occurred within five (5) years prior to the date of the proposed investment or, if the obligations were issued fewer than five (5) years prior to the date of investment, no default in payment of principal or interest has occurred on the obligations to be purchased or on any other public obligation of the obligor within five (5) years of the investment; or
 - (3) Any local improvement district in this state to finance local improvements authorized by law, if the principal and interest of the obligations are payable from assessments on real property within the local improvement district and no default on the part of the obligor in payment of principal or interest on any of its obligations has occurred within five (5) years prior to the date of the proposed investment or, if the obligations were issued fewer than five (5) years prior to the date of investment, no default in payment of principal or interest has occurred on the obligations to be purchased or on any other public obligation of the obligor within five (5) years of the investment.

23-63-1615. Regulations.

- (a) The Insurance Commissioner may promulgate regulations relating to captive insurance companies as are necessary to carry out this subchapter.
- (b)(1) The commissioner may promulgate regulations establishing standards to ensure that a parent or affiliated company is able to exercise control of the risk management function of any controlled unaffiliated business to be insured by the pure captive insurance company.

- (2) Prior to these regulations being promulgated, the commissioner may grant, by temporary order, authority to a pure captive insurance company to insure risks.

23-63-1616. Limitations.

The Arkansas Insurance Code, does not apply to captive insurance companies except for those provisions contained in or specifically referenced in this subchapter which are to be incorporated into the Arkansas Insurance Code, § 23-60-101 et seq.

23-63-1617. Reorganizations, receiverships, and injunctions.

Except as provided in this subchapter, the terms and conditions in the Arkansas Insurance Code, pertaining to insurance reorganizations, receiverships, and injunctions apply to captive insurance companies formed or licensed under this subchapter.

23-63-1618. Availability of funds.

In the case of a producer reinsurance captive insurance company or a sponsored captive insurance company:

- (1) The assets of the protected cell may not be used to pay any expenses or claims other than those attributable to the protected cell; and
- (2) Its capital and surplus must be available to pay any expenses of or claims against the captive insurance company at all times.

23-63-1619. Conversions and mergers.

- (a) An association captive insurance company or industrial insured group formed as a stock or mutual corporation may be converted to or merged with and into a reciprocal insurer in accordance with a plan and this section.
- (b) A plan for conversion or merger:
 - (1) Must be fair and equitable to the shareholders, in the case of a stock insurer, or the policyholders, in the case of a mutual insurer; and
 - (2) Shall provide for the purchase of the shares of any nonconsenting shareholder of a stock insurer or the policyholder interest of any nonconsenting policyholder of a mutual insurer in substantially the same manner and subject to the same rights and conditions as are accorded a dissenting shareholder or a dissenting policyholder under § 4-26-1007.
- (c) In the case of a conversion authorized under subsection (a) of this section:
 - (1) The conversion must be accomplished under a reasonable plan and procedure as may be approved by the Insurance Commissioner;
 - (2) The commissioner may not approve the plan of conversion, unless the plan:
 - (A) Satisfies subsection (b) of this section;
 - (B)(i) Provides for a hearing, of which notice has been given to the insurer, its directors, officers, and stockholders, in the case of a stock insurer, or policyholders, in the case of a mutual insurer, all of whom have the right to appear at the hearing.
 - (ii)(a) The commissioner may waive or modify the requirements for the hearing.

- (b) If a notice of hearing is required but no hearing is requested, the commissioner may cancel the hearing;
- (C) Provides for the conversion of existing stockholder or policyholder interests into subscriber interests in the resulting reciprocal insurer proportionate to stockholder or policyholder interests in the stock or mutual insurer; and
- (D) Is approved:
 - (i) In the case of a stock insurer, by a majority of the shares entitled to vote represented in person or by proxy at a duly called regular or special meeting at which a quorum is present; or
 - (ii) In the case of a mutual insurer, by a majority of the voting interests of policyholders represented in person or by proxy at a duly called regular or special meeting at which a quorum is present;
- (3) The commissioner shall approve the plan of conversion, if the commissioner finds that the conversion will promote the general good of the state in conformity with those standards set forth in § 23-63-1606(f);
- (4) If the commissioner approves the plan, the commissioner shall amend the converting insurer's certificate of authority to reflect conversion to a reciprocal insurer and issue the amended certificate of authority to the company's attorney in fact;
- (5) Upon issuance of an amended certificate of authority of a reciprocal insurer by the commissioner, the conversion is effective; and
- (6) Upon the effectiveness of the conversion, the corporate existence of the converting insurer shall cease.
- (d) A merger authorized under subsection (a) of this section must be accomplished substantially in accordance with the Arkansas Insurance Code. For purposes of the merger:
 - (1) The plan or merger shall satisfy subsection (b) of this section;
 - (2) The subscribers' advisory committee of a reciprocal insurer must be equivalent to the board of directors of a stock or mutual insurance company;
 - (3) The subscribers of a reciprocal insurer must be the equivalent to the policyholders of a mutual insurance company;
 - (4) If a subscribers' advisory committee does not have a president or secretary, the officers of the committee having substantially equivalent duties are deemed to be the president and secretary of the committee;
 - (5)(A) The commissioner shall approve the articles of merger if the commissioner finds that the merger will promote the general good of the state in conformity with those standards set forth in § 23-63-1606(f).
 - (B) If the commissioner approves the articles of merger, the commissioner shall endorse the articles;
 - (6)(A) Notwithstanding § 23-63-1604, the commissioner may permit the formation without surplus of a captive insurance company organized as a reciprocal insurer into which an existing captive insurance company may be merged for the purpose of facilitating a transaction under this section.
 - (B) There may be no more than one (1) authorized insurance company surviving

the merger; and

- (7)(A) An alien insurer may be a party to a merger authorized under subsection (a) of this section, if the requirements for the merger between a domestic and a foreign insurer under the Insurance Holding Company Regulatory Act, § 23-63-501 et seq., apply to a merger between a domestic and an alien insurer under this subsection.
- (B) The alien insurer must be treated as a foreign insurer under the Insurance Holding Company Regulatory Act, § 23-63-501 et seq., and other jurisdictions must be the equivalent of a state for purposes of the Insurance Holding Company Regulatory Act, § 23-63-501 et seq.
- (e) A conversion or merger under this section has all the effects of a conversion or merger under the Arkansas Insurance Code, to the extent these effects are not inconsistent with this subchapter.

23-63-1620. Sponsorship requirements.

- (a) One (1) or more sponsors may form a sponsored captive insurance company under this subchapter.
- (b) A sponsor of a sponsored captive insurance company must be:
 - (1) An insurer licensed under the laws of any state;
 - (2) A reinsurer authorized or approved under the laws of any state;
 - (3) A captive insurance company formed or licensed under this subchapter; or
 - (4) Any other corporation, if approved by the Insurance Commissioner, in a manner to be prescribed by regulation.
- (c) The business written by a sponsored captive insurance company must be fronted by an insurance company licensed under the laws of any state.
- (d) A risk retention group may not be either a sponsor or a participant of a sponsored captive insurance company.
- (e) A sponsored captive insurance company formed or licensed under this subchapter may establish and maintain one (1) or more protected cells to insure risks of one (1) or more participants, subject to the following conditions:
 - (1) The shareholders of a sponsored captive insurance company must be limited to its participants and sponsors;
 - (2) Each protected cell must be accounted for separately on the books and records of the sponsored captive insurance company to reflect the financial condition, results of operations of the protected cell, net income or loss, dividends or other distributions to participants, and other factors provided for in the participant contract or required by the commissioner;
 - (3) The assets of a protected cell must not be chargeable with liabilities arising out of any other insurance business the sponsored captive insurance company may conduct;
 - (4) No sale, exchange, or other transfer of assets may be made by the sponsored captive insurance company between or among any of its protected cells without the consent of the protected cells;
- (5)(A) No sale, exchange, transfer of assets, dividend, or distribution may be made

from a protected cell to a sponsor or participant without the commissioner's approval.

- (B) In no event may the commissioner's approval be given if the sale, exchange, transfer, dividend, or distribution would result in insolvency or impairment with respect to a protected cell;
- (6) A sponsored captive insurance company shall file annually all the financial reports the commissioner requires, which shall include, but are not limited to, accounting statements detailing the financial experience of each protected cell;
- (7) A sponsored captive insurance company shall notify the commissioner in writing within ten (10) business days of a protected cell that is insolvent or unable to meet its claim or expense obligations; and
- (8)(A) No participant contract shall take effect without the commissioner's prior written approval.
- (B) The addition of each new protected cell and the withdrawal of any participant of any existing protected cell constitute a change in the business plan requiring the commissioner's prior written approval.

23-63-1621. Participants.

- (a) An association, corporation, limited liability company, partnership, trust, or other business entity may be a participant in a sponsored captive insurance company formed or licensed under this subchapter.
- (b) A sponsor may be a participant in a sponsored captive insurance company.
- (c) A participant need not be a shareholder of the sponsored captive insurance company or an affiliate of the company.
- (d) A participant shall insure only its own risks through a sponsored captive insurance company.

23-63-1622. Producer reinsurance protected cell requirements.

A producer reinsurance captive insurance company formed or licensed under this subchapter may establish and maintain one (1) or more protected cells to insure risks, subject to the following conditions:

- (1) Each protected cell must be accounted for separately on the books and records of the producer reinsurance captive insurance company to reflect the financial condition, results of operations of the protected cell, net income or loss, dividends or other distributions, and other factors as may be required by the commissioner;
- (2) The assets of a protected cell must not be chargeable with liabilities arising out of any other insurance business the producer reinsurance captive insurance company may conduct;
- (3) No sale, exchange, or other transfer of assets may be made by the producer reinsurance captive insurance company between or among any of its protected cells without the consent of the protected cells;
- (4) A producer reinsurance captive insurance company shall file annually the financial reports the Insurance Commissioner requires, which shall include, but are not limited to, accounting statements detailing the financial experience of each

- protected cell; and
- (5) A producer reinsurance captive insurance company shall notify the commissioner in writing within ten (10) business days of a protected cell that is insolvent or unable to meet its claim or expense obligations.

23-63-1623. Certificate of authority.

A licensed captive insurance company that meets the necessary requirements of the Arkansas Insurance Code, imposed upon an insurer may be considered for issuance of a certificate of authority to act as an insurer in this state.

**Subchapter 17.
Protected Cell Company Act.**

23-63-1701. Short title.

This subchapter may be cited as the "Protected Cell Company Act".

23-63-1702. Purpose.

This subchapter provides:

- (1) A basis for the creation of protected cells by a domestic insurer as one means of accessing alternative sources of capital and achieving the benefits of insurance securitization;
- (2) Funds to investors in fully funded insurance securitization transactions that are available to pay the insurer's insurance obligations or to repay the investors, or both; and
- (3) A means to achieve more efficiencies in conducting insurance securitizations.

23-63-1703. Definitions.

For the purposes of this subchapter:

- (1) "Domestic insurer" means an insurer domiciled in the State of Arkansas;
- (2) "Fully funded" means that, with respect to any exposure attributed to a protected cell, the fair value of the protected cell assets on the date on which the insurance securitization is effected equals or exceeds the maximum possible exposure attributable to the protected cell with respect to such exposures;
- (3) "General account" means the assets and liabilities of a protected cell company other than protected cell assets and protected cell liabilities;
- (4) "Indemnity trigger" means a transaction term by which relief of the issuer's obligation to repay investors is triggered by incurring a specified level of losses under its insurance or reinsurance contracts;
- (5)(A) "Fair value" of an asset or liability means the amount at which that asset or liability could be bought, incurred, sold, or settled in a current transaction between willing parties that is not a forced or liquidation sale.
(B)(i) Quoted market prices in active markets are the best evidence of fair value and shall be used as the basis for the measurement, if available.

- (ii) If a quoted market price is available, the fair value is the product of the number of trading units multiplied by the market price.
- (iii) If quoted market prices are not available, the estimate of fair value shall be based on the best information available.
- (iv)(a) The estimate of fair value shall consider prices for similar assets and liabilities and the results of valuation techniques to the extent available in the circumstances.

(b) Examples of valuation techniques include the present value of estimated expected future cash flows using a discount rate commensurate with the risks involved, option-pricing models, matrix pricing, option-adjusted spread models, and fundamental analysis.

(c) Valuation techniques for measuring financial assets and liabilities and for servicing assets and liabilities shall be consistent with the objective of measuring fair value. Those techniques shall incorporate assumptions that market participants would use in their estimates of values, future revenues, and future expenses, including assumptions about interest rates, default, prepayment, and volatility.

(d) In measuring financial liabilities and servicing liabilities at fair value by discounting estimated future cash flows, an objective is to use discount rates at which those liabilities could be settled in an arm's-length transaction.

Estimates of expected future cash flows, if used to estimate fair value, shall be the best estimate based on reasonable and supportable assumptions and projections.

- (2) All available evidence shall be considered in developing estimates of expected future cash flows.
- (3) The weight given to the evidence shall be commensurate with the extent to which the evidence can be verified objectively.
- (4) If a range is estimated for either the amount or timing of possible cash flows, the likelihood of possible outcomes shall be considered in determining the best estimate of future cash flows;
- (6) "Nonindemnity trigger" means a transaction term by which relief of the issuer's obligation to repay investors is triggered solely by some event or condition other than the individual protected cell company's incurring a specified level of losses under its insurance or reinsurance contracts;
- (7) "Protected cell" means an identified pool of assets and liabilities of a protected cell company segregated and insulated by means of this subchapter from the remainder of the protected cell company's assets and liabilities;
- (8) "Protected cell account" means a specifically identified bank or custodial account established by a protected cell company for the purpose of segregating the protected cell assets of one protected cell from the protected cell assets of other protected cells and from the assets of the protected cell company's general account;
- (9) "Protected cell assets" means all assets, contract rights, and general intangibles identified with and attributable to a specific protected cell of a protected cell

- company;
- (10) "Protected cell company" means a domestic insurer that has one (1) or more protected cells;
 - (11) "Protected cell company insurance securitization" means:
 - (A) The issuance of debt instruments by a protected cell company from which the proceeds support the exposures attributed to the protected cell; and
 - (B) The repayment of principal or interest, or both, to investors under the transaction terms is contingent upon the occurrence or nonoccurrence of an event which exposes the protected cell company to loss under insurance or reinsurance contracts it has issued; and
 - (12) "Protected cell liabilities" means all liabilities and other obligations identified with and attributable to a specific protected cell of a protected cell company.

23-63-1704. Establishment of protected cells.

- (a)(1) A protected cell company may establish one (1) or more protected cells by submitting a plan of operation, or amendments to a plan, with respect to each protected cell in connection with an insurance securitization to the Insurance Commissioner for prior written approval.
- (2) The plan shall include, but not be limited to:
 - (A) The specific business objectives of the protected cell; and
 - (B) The investment guidelines of the protected cell.
- (3) Upon receiving written approval, the protected cell company, in accordance with the approved plan of operation, may attribute to the protected cell insurance obligations with respect to its insurance business and obligations relating to the insurance securitization and assets to fund the obligations.
- (4) A protected cell shall have its own distinct name or designation, which shall include the words "protected cell".
- (5) The protected cell company shall transfer all assets attributable to a protected cell to one (1) or more separately established and identified protected cell accounts bearing the name or designation of that protected cell.
- (6) Protected cell assets shall be held in the protected cell accounts for the purpose of satisfying the obligations of that protected cell.
- (b)(1) All attributions of assets and liabilities between a protected cell and the general account shall be in accordance with the plan of operation approved by the commissioner.
- (2) No other attribution of assets or liabilities may be made by a protected cell company between the protected cell company's general account and its protected cells.
- (3) Any attribution of assets and liabilities between the general account and a protected cell or from investors, in the form of principal on a debt instrument issued by a protected cell company in connection with a protected cell company securitization, shall be in cash or in readily marketable securities with established market values.
- (c)(1) The creation of a protected cell does not create, in respect to that protected cell, a

legal person separate from the protected cell company.

(2)(A) Amounts attributed to a protected cell under this subchapter, including assets transferred to a protected cell account, are owned by the protected cell company.

(B) The protected cell company may not be, nor hold itself out to be, a trustee with respect to those protected cell assets of that protected cell account.

(3) The protected cell company, however, may allow for a security interest to attach to protected cell assets or a protected cell account when in favor of a creditor of the protected cell if allowed by applicable law.

(d)(1) This subchapter does not prohibit the protected cell company from contracting with or arranging for an investment advisor, commodity trading advisor, or other third party to manage the protected cell assets of a protected cell.

(2) All remuneration, expenses, and other compensation of the third-party advisor or manager are payable from the protected cell assets of that protected cell, and not from the protected cell assets of other protected cells or the assets of the protected cell company's general account.

(e)(1) A protected cell company shall establish administrative and accounting procedures necessary to properly identify the one (1) or more protected cells of the protected cell company and the protected cell assets and liabilities attributable to the protected cells. It shall be the duty of the directors of a protected cell company to:

(A) Keep protected cell assets and liabilities separate and separately identifiable from the assets and liabilities of the protected cell company's general account; and

(B) Keep protected cell assets and liabilities attributable to one protected cell separate and separately identifiable from protected cell assets and liabilities attributable to other protected cells.

(2)(A) If this subsection is violated, the remedy of tracing shall be applicable to protected cell assets when commingled with protected cell assets of other protected cells or the assets of the protected cell company's general account.

(B) The remedy of tracing shall not be an exclusive remedy.

(f) When establishing a protected cell, the protected cell company shall attribute to the protected cell, assets with a value at least equal to the reserves and other insurance liabilities attributed to that protected cell.

23-63-1705. Use and operation of protected cells.

(a)(1) The protected cell assets of a protected cell may not be charged with liabilities arising out of any other business the protected cell company may conduct.

(2) All contracts or other documentation reflecting protected cell liabilities shall clearly indicate that only the protected cell assets are available for the satisfaction of those protected cell liabilities.

(b)(1) The income, gains, and losses, realized or unrealized, from protected cell assets and liabilities shall be credited to or charged against the protected cell without regard to other income, gains, or losses of the protected cell company, including income, gains, or losses of other protected cells.

(2)(A) Amounts attributed to any protected cell and accumulations on the attributed

amounts may be invested and reinvested without regard to any requirements or limitations of § 23-63-801 et seq.

- (B) The investments in a protected cell or cells shall not be taken into account in applying the investment limitations applicable to the investments of the protected cell company.
- (c) Assets attributed to a protected cell shall be valued at their fair value on the date of valuation.
- (d)(1) A protected cell company, in respect to its protected cells, shall engage in fully funded indemnity triggered insurance securitization to support in full the protected cell exposures attributable to that protected cell.
 - (2) A protected cell company insurance securitization that is nonindemnity triggered shall qualify as an insurance securitization after the Insurance Commissioner adopts regulations addressing the methods of funding the portion of the risk that is not indemnity based, accounting, disclosure, risk-based capital treatment, and assessing risks associated with such securitizations.
 - (3) A protected cell company insurance securitization that is not fully funded, whether indemnity triggered or nonindemnity triggered, is prohibited.
 - (4)(A) Protected cell assets may be used to pay interest or other consideration on any outstanding debt or other obligation attributable to that protected cell.
 - (B) Nothing in this subsection shall prevent a protected cell company from entering into a swap agreement or other transaction for the account of the protected cell that has the effect of guaranteeing interest or other consideration.
- (e)(1) In all protected cell company insurance securitizations, the contracts or other documentation effecting the transaction shall contain provisions identifying the protected cell to which the transaction will be attributed.
 - (2) The contracts or other documentation shall clearly disclose that the assets of that protected cell, and only those assets, are available to pay the obligations of that protected cell.
 - (3) Failure to include the language required by this subsection in the contracts or other documentation shall not be used as the sole basis by creditors, reinsurers, or other claimants to circumvent the provisions of this subchapter.
- (f)(1) A protected cell company shall be authorized to attribute to a protected cell account only the insurance obligations relating to the protected cell company's general account.
 - (2) A protected cell shall not be authorized to issue insurance or reinsurance contracts directly to policyholders or reinsureds or to have any obligation to the policyholders or reinsureds of the protected cell company's general account.
- (g) At the cessation of business of a protected cell, the protected cell company shall voluntarily close out the protected cell account.

23-63-1706. Reach of creditors and other claimants.

- (a)(1)(A) Protected cell assets shall be available only to the creditors of the protected cell company that are creditors to that protected cell.

- (B) Those creditors shall be entitled to have recourse to the protected cell assets attributable to that protected cell and shall be absolutely protected from the creditors of the protected cell company that are not creditors in respect to that protected cell.
- (C) Creditors of a protected cell shall not be entitled to have recourse against the protected cell assets of other protected cells or the assets of the protected cell company's general account.
- (2) Protected cell assets shall be available only to creditors of a protected cell company after all protected cell liabilities have been extinguished or as provided for in the plan of operation relating to that protected cell.
- (b) When an obligation of a protected cell company to a person arises from a transaction, or is otherwise imposed, in respect to a protected cell, that obligation of the protected cell company:
 - (1) Shall extend only to the protected cell assets attributable to that protected cell, and, with respect to that obligation, the person shall be entitled to have recourse only to the protected cell assets attributable to that protected cell; and
 - (2) Shall not extend to the protected cell assets of any other protected cell or the assets of the protected cell company's general account, and, with respect to that obligation, that person shall not be entitled to have recourse to the protected cell assets of any other protected cell or the assets of the protected cell company's general account.
- (c) When an obligation of a protected cell company relates solely to the general account, the obligation of the protected cell company shall extend only to, and that creditor shall be entitled, with respect to that obligation, to have recourse only to the assets of the protected cell company's general account.
- (d)(1) The activities, assets, and obligations relating to a protected cell are not subject to the laws of this state governing life and health and property and casualty guaranty or insolvency funds.
- (2) A protected cell or a protected cell company shall not be assessed by or otherwise be required to contribute to any guaranty fund or guaranty association in this state with respect to the activities, assets, or obligations of a protected cell.
- (3) This subsection shall not affect the activities or obligations of an insurer's general account.
- (e) The establishment of one (1) or more protected cells alone shall not be deemed to be a fraudulent conveyance, an intent by the protected cell company to defraud creditors, or the carrying out of business by the protected cell company for any other fraudulent purpose.

23-63-1707. Conservation, rehabilitation, or liquidation of protected cell companies.

- (a) Notwithstanding any provision of the Arkansas Insurance Code or any regulation promulgated under the Arkansas Insurance Code or any other applicable law or regulation, upon any order of conservation, rehabilitation, or liquidation of a protected cell company, the receiver shall be bound to deal with the protected cell company's assets and liabilities, including protected cell assets and protected cell

liabilities, in conformance with this subchapter.

- (b) With respect to amounts recoverable under a protected cell company insurance securitization, the amount recoverable by the receiver shall not be reduced or diminished as a result of the entry of an order of conservation, rehabilitation, or liquidation with respect to the protected cell company, notwithstanding any provision in the contracts or other documentation governing the protected cell company insurance securitization.

23-63-1708. No transaction of an insurance business.

- (a) A protected cell company insurance securitization shall not be deemed to be an insurance or reinsurance contract.
- (b) An investor in a protected cell company insurance securitization shall not be deemed, by sole means of this investment, to be transacting insurance business in this state.
- (c) The underwriters or selling agents and their partners, directors, officers, members, managers, employees, agents, representatives, and advisors involved in a protected cell company insurance securitization shall not be deemed to be conducting an insurance or reinsurance agency, brokerage, intermediary, advisory, or consulting business by virtue of their activities in connection with the protected cell company insurance securitization.

23-63-1709. Authority to adopt regulations.

The Insurance Commissioner may promulgate regulations necessary to carry out the purpose and intent of this subchapter.